Supreme Court, U.S.
FILED

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No. _____

In the Supreme Court of the United States

Christ's Household of Faith,

Petitioner,

v.

Patricia L. Rooney,

Respondent,

v.

Michael T. Rooney,

Respondent,

and

Ramsey County,

Intervenor, Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Does a court's exercise of subject matter jurisdiction to review a religious organization's doctrine and beliefs for the purpose of imputing child support and spousal maintenance obligations to the organization through a state income withholding statute constitute excessive entanglement with religious affairs and a violation of the First Amendment of the federal constitution?

*Christ's Household of Faith, Inc. is not a publicly traded company, has no parent company, and has no stockholders.

LIST OF PARTIES

The parties to Rooney v. Rooney, et al are Christ's Household of Faith, Inc., Petitioner; and Patricia L. Rooney, Michael T. Rooney, and Ramsey County, Respondents.

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Minnesota Court of Appeals dated September 16, 2003.

OPINION BELOW

The opinion of the Minnesota Court of Appeals in Rooney v. Rooney, et al, 669 N.W.2d 362 (Minn. Ct. App. September 16, 2003) is printed in the Appendix ("App.") at B-1. Also included in the Appendix is the Order denying Petitioner's petition for review by the Minnesota Supreme Court, No. A03-53 (Minn. November 25, 2003) at App. C-1, and the Order of Family Court Magistrate Brad A. Johnson, No. F1-87-23807 (Ramsey County Dist. Ct. Jan. 18, 2003) at App. A-1.

JURISDICTION

The Minnesota Court of Appeals issued a decision in the above-captioned matter on September 16, 2003. Petitioner's petition for review to the Minnesota Supreme Court was denied on November 25, 2003. Jurisdiction is vested in this Court by 28 U.S.C. § 1257 (1988).

CONSTITUTIONAL PROVISION

U.S. Const. amend. I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

STATEMENT OF THE CASE

Petitioner (the "Church"), a religious community, seeks a determination that it is not subject to Minn. Stat. § 518.6111 (1997) – the Minnesota income withholding statute applicable to state employers and other "payors of funds" – because a judicial inquiry to determine whether the Church is an employer or payor of funds cannot occur without unconstitutionally delving into the relationship between the Church and its members.

According to the beliefs of the Church, its members forsake their previous worldly possessions and lifestyle. The members are spiritually committed to God and the Church, living and working with the Church and its members to further the Church's religious purposes. The Church has developed several businesses for which its members provide services in furtherance of the Church's welfare and its mission. The Church provides sustenance to the members to enable each member to continue to pursue his religious vocation, and the members devote themselves and whatever they have to the Church as a matter of faith and conscience to which they are bound. Under the Church's doctrine, the Church may not "employ" its members, the Church may not pay "wages," and the members do not receive "wages" or have an entitlement to "wages" or any form of recompense

for services given to the Church.[1] Accordingly, any characterization of the Church as an employer or payor of funds is directly contrary to the Church's doctrine, faith and practice.

Respondents Michael T. Rooney ("Rooney") and Patricia L. Rooney were married in 1964 and became members of the Church in 1966. Patricia L. Rooney left the Church in 1987 and the parties' marriage was dissolved by a 1988 Judgment. The Judgment imputed income to Rooney by estimating his earning ability if he were to provide services to an employer in the secular community, and based on his imputed income, determined the amount of Rooney's spousal maintenance and child support obligations. Subsequently, the Church was ordered to withhold from Rooney's "wages" in order to satisfy Rooney's obligations although there was, in fact, no payment provided by the Church for Rooney's services, nor any monetary commitment of the Church to Rooney upon which such withholding could be based. The Church appealed that determination to the Minnesota Court of Appeals and in 1991 that Court remanded the matter to determine 1) whether the Church waived its rights; 2) if not, whether the Church was an employer; and 3) the amount of Rooney' spousal maintenance and child support obligations. No action was taken on the remand for over ten years, until 2002.

The Church became a party to this case in 2002 and argued before the Family Court Magistrate that a characterization of the Church as an employer or payor of funds constituted a violation of the Church's rights under the First Amendment of the federal constitution. The Magistrate

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[1] In addition, because the Church is classified as an apostolic fellowship by the Internal Revenue Service, the in-kind benefits it provides to its members cannot be classified as wages. See 26 U.S.C. § 3401(a)(9) (2001).

rejected this argument, finding that its 1988 rejection of Rooney's First Amendment arguments also applied to the Church. The Magistrate also erroneously determined that the Church was an employer and payor of funds for purposes of Minn. Stat. § 518.6111.

The Church sought review in District Court of the Magistrate's 2002 Order, again asserting its rights under the federal constitution. The District Court affirmed the Magistrate's Order in all relevant respects, and remanded for a determination of the Church's liability for unpaid income withholding and amounts to be withheld from Rooney's "income."

On remand, the Magistrate did not calculate the amount that the Church "pays" to Rooney or the value of Rooney's services to the Church in order to determine the Church's liability or the amounts to be withheld from Rooney's "income." He reasoned as follows:

> The valuation of the services provided by ... Rooney to [the Church], or the valuation of the services provided by [the Church] to ... Rooney, would require the close examination of the details, mundane and sacred, of the relationship between a man and his church ... The examination of the relationship between ... Rooney and [the Church] is not necessary to resolve the issues and would require an offensive degree of governmental intrusion into the affairs of [the Church] and [Rooney].

Order of Family Court Magistrate Brad A. Johnson dated January 18, 2003.

In calculating the amount to be withheld from Rooney's "income" and the Church's liability, the Magistrate instead relied on the amount of income imputed to Rooney in the 1988 Judgment dissolving his marriage, thereby effectively imputing income payments to the Church as well.

The Magistrate's Order was affirmed by the District Court, and the Church appealed to the Minnesota Court of Appeals. The Church argued that a review of the Church's doctrine and beliefs regarding its relationship with its members to determine the applicability of Minn. Stat. § 518.6111 was beyond the subject matter jurisdiction of the court. The Church specifically argued that requiring it to comply with Minn. Stat. § 518.6111 would constitute a violation of its rights under the First Amendment of the federal constitution because an inquiry by the court into the internal governance of the Church would result in excessive entanglement with matters relating to the Church's faith and doctrine. In addition, the Church argued that – if an inquiry were conducted – it would reveal that the Church is not an employer or payor of funds because any necessaries that a member receives from the Church are not *quid pro quo* remuneration for a member's service to the Church's business activities related to its mission. Because the Church strives to follow the paradigm of the early Christian church, one of its fundamental beliefs is that there is no direct correlation between the services rendered by a member and any benefits he or she receives from the Church. All members receive the same necessaries, regardless of whether or how much they contribute to the Church's business or other activities.

The Minnesota Court of Appeals erroneously concluded that the District Court could inquire into the relationship between the Church and its members because it wrongfully found that the inquiry could be accomplished by application of neutral factors. The Court of Appeals held that Minn. Stat.

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§ 518.6111 could be applied to the Church because it is a neutral law of general applicability and does not affect religious entities differently than others. The Court wrote:

> We have observed the Minn. Stat. § 518.6111 (2002), is *applicableto all obligors and their employers*, without respect to religion. This law applies generally; it is neither directed toward a religious entity, nor does it affect religious entities differently than others in similar economic relationships.

669 N.W.2d 362, 370 (Minn. Ct. App. 2003)(emphasis added). The Court failed to recognize that before it could apply the withholding statute to the Church, however, it must *first* determine whether the Church is an employer or payor of funds under the statute. If it is not, the statute is inapplicable. It is that inquiry which is prohibited by the constitution.

Based on this erroneous conclusion, the Court of Appeals found that the District Court had subject matter jurisdiction to determine whether the Church was an employer or payor of funds and the inquiry would not violate the Church's rights under the First Amendment of the federal constitution.

The Minnesota Supreme Court denied the Church's petition for review.

REASONS FOR GRANTING THE WRIT

The Church urges this Court to grant its Petition for Writ of Certiorari to (1) redress the error which occurred when the Minnesota Court of Appeals decided a First Amendment question in a way that directly conflicts with this Court's opinions as well as opinions issued by the Eighth Circuit and the federal district court in Minnesota, and (2) clarify the

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limits of a civil court's subject matter jurisdiction to examine issues which involve and potentially alter religious beliefs, doctrine, and practice concerning matters of internal governance.

The Minnesota Court of Appeals' determination in Rooney that the Church's rights under the First Amendment were not violated is plainly erroneous. This Court has long held that courts do not have subject matter jurisdiction to examine matters involving church doctrine, faith and practice. Doing so results in excessive entanglement which is prohibited under the First Amendment of the federal constitution. Despite the clear mandate of the federal constitution and the numerous Supreme Court cases which have analyzed First Amendment concerns, the Minnesota Court of Appeals blatantly ignored Supreme Court precedent and decided the Rooney case in a manner which is directly contrary to those decisions.

In addition, the right protected is one of the most important afforded to any religious organization under the federal constitution. It is a basic and fundamental right of religious organizations to remain free to decide matters of church faith and doctrine and to freely exercise such faith and doctrine without state interference. If courts are permitted to examine and probe into and then mischaracterize matters of ecclesiastical concern, the courts will take away a religious entity's right to decide for itself the meaning of its doctrines and laws, and the right to freely practice the life ordered thereby, which is indeed the very basis for its existence. Such deprivation will only open the door to further infringements on the rights of religious organizations and will blur the distinction between church and state which the Court has strived to maintain for nearly two hundred years.

This Court must act as the final authority concerning a basic constitutional right affecting multitudes of religious organizations and their members to retain the right to determine matters of faith, doctrine and practice without state interference. Without a decision from this Court overturning the Minnesota Court of Appeals' decision, the Church will be forced to accept a third party's characterization of its relationship with its members, and scores of religious organizations will be faced with the prospect that their own beliefs and faith will be subject to scrutiny by secular authorities and in danger of being eviscerated. Accordingly, the Church respectfully requests that the Court act as the guardian of this fundamental right and protect the religious freedom guaranteed under the federal constitution.

ARGUMENT

The Supreme Court of the United States has steadfastly upheld the First Amendment's command that secular authorities may not interfere with the internal workings of religious bodies because of the excessive entanglement which could result between church and state, and that civil courts lack subject matter jurisdiction over most disputes relating to a religious organization.[2] Jones v. Wolf, 443 U.S. 595, 602 (1979) (state may not inquire into or review internal governance of religious institution); Lemon v. Kurtzman, 403 U.S. 602, 612, 613 (1971); Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116 (1952)(religious freedom encompasses the "power [of religious bodies] to decide for themselves, free from state interference, matters of church ... faith and doctrine."). Indeed, the Court stated in no uncertain terms that "[i]t is not only the conclusions that may be reached ... which may impinge on rights guaranteed by the Religion Clauses

[2] The First Amendment applies to the states by virtue of the Fourteenth Amendment. Cantwell v. State of Connecticut, 310 U.S. 296, 303 (1940).

but also the very process of inquiry[.]" National Labor Relations Bd. v. Catholic Bishop of Chicago, 440 U.S. 490, 502 (1979).

This Court has explained that the purpose of the First Amendment is to "prevent, as far as possible, the intrusion of either [the church or the state] into the precincts of the other." Lemon, 403 U.S. at 614.

In finding that the Church was a payor of funds, the Minnesota Court of Appeals exceeded the bounds of its jurisdiction because, not only did it engage in an inquiry concerning a relationship that is defined by the Church's doctrine and beliefs, but boldly proceeded to subvert the Church's doctrine concerning its relationship with its members by offensively substituting its secular views and labeling the Church a payor of funds.[3] See Maryland and Virginia Churches v. Sharpsburg Church, 396 U.S. 367, 369 (1970) (Brennan, J., concurring)(civil determination of religious doctrine violates the First Amendment). As the Court stated in Serbian Eastern Orthodox Diocese v. Milivojevich:

> [I]t is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith *whether or not rational or measurable by objective criteria* ... The Supreme Court of Illinois substituted its interpretation of the Diocesan and Mother church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation. This the First and Fourteenth Amendments forbid.

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[3] In fact, the Minnesota Court of Appeals glossed over the First Amendment analysis and devoted no more than three pages of discussion to this significant issue in its approximately twenty-six page decision.

426 U.S. 696, 714-15, 722 (1976) (emphasis added).

Because the Minnesota Court of Appeals' decision inquired into, and then substituted its interpretation of the "proper" relationship between the Church and its members for the Church's doctrine regarding its relationship with its members, the decision directly contradicts Supreme Court precedent. Therefore, the Court should grant this Petition for Writ of Certiorari in order to address the Minnesota Court of Appeals' misapplication of First Amendment law.

A. The Minnesota Court of Appeals' Decision Conflicts With This Court's Decisions in Serbian Eastern Orthodox Diocese v. Milivojevich and Jones v. Wolf.

Excessive entanglement under the First Amendment results when judicial review of a claim requires "a searching ... inquiry into church doctrine." See Milivojevich, 426 U.S. at 709. The Milivojevich court expressed its reasoning by quoting with approval its prior decision in Watson v. Jones:

> [I]t is a very different thing where a subject matter of dispute ... a matter which concerns ... church discipline, ecclesiastical government ... becomes the subject of its action ... If the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the

> civil court. This principle would deprive these bodies of the right of construing their own church laws, [and] would open the way to all ... [forms of] evils[.]

13 Wall. 679, 733-34 (1872).

The record of the Rooney case demonstrates the prophetic wisdom of this statement.

There may be no excessive entanglement, however, when neutral principles can be applied to the inquiry. The neutral principles doctrine is grounded on the notion that not every dispute involving a religious organization implicates First Amendment concerns. See Jones, 443 U.S. at 602-03. Neutral principles are *wholly secular legal rules* whose application to religious parties or disputes *do not entail theological or doctrinal evaluations*, and hence free civil courts from entanglement in questions of religious doctrine. See id. at 603. (citations omitted)(emphasis added). Thus, secular courts may decide civil disputes involving a religious organization if there are neutral principles which apply. See id.

In Rooney, the Minnesota Court of Appeals' finding of subject matter jurisdiction was essentially premised on the mistaken belief that "a determination of whether a payor/payee relationship exists between the Church and Rooney can be accomplished by application of neutral factors and principles of law." 669 N.W.2d at 368. However, *such a finding is erroneous according to the very definition of a neutral principle because an evaluation of the Church's doctrines and beliefs will be an unavoidable and inevitable consequence of determining whether or not there is a "payor/payee" relationship between Rooney and the Church*, especially when the Church and the member deny that

relationship. As the Church has indicated on numerous occasions, individuals can only become members of the Church if they express a clear intent of abandoning secular concepts of employment between themselves and their God's church, including any expectation of serving their God for remuneration or payment of any kind. Accordingly, a member cannot be an employee of the Church and the Church cannot be characterized as an employer of or payor of funds to the member. Such a characterization is diametrically opposed to the image or schema of life a member agrees to embrace upon entering the Church and directly conflicts with the public expression of the Church's faith.

Thus, the relationship between Rooney and the Church is based on fundamental religious beliefs. In order for the District Court to assess the verity of the Church's claim that it is not an employer or payor of funds, it will necessarily have to determine whether remuneration was provided by the Church to a member for his services and confirm that the member's services are provided voluntarily without expectation of payment. Such an analysis cannot occur without delving into and questioning the validity of the Church's basic tenets concerning offerings of time and labor by its members to the Church, the model of the Church's relationship with its members, and the relationship of the Church and its members to their God.

By disregarding the Church's First Amendment argument, the Minnesota Court of Appeals essentially sanctioned the type of conduct that Watson specifically warned against. In order to determine whether the Church is an employer or payor of funds, the District Court will inevitably be required to pass upon the usages, customs, laws, and doctrines of the Church in order to determine the truth or falsity of the Church's statement that it is not, never has been and, according to its doctrines, could never be an employer or

payor of funds with respect to Rooney or any of its other members. By engaging in this inquiry, the District Court would strip the Church of its constitutional right to decide a fundamental matter of internal church governance – the essence of the relationship between a church and its members. The Minnesota Court of Appeals would also be opening the door to other intrusions by secular authorities into matters which are strictly ecclesiastical in nature. This the courts cannot do, as such acts are clearly prohibited under the First Amendment.

B. The Minnesota Court of Appeals' Decision Conflicts with The Eighth Circuit Court of Appeals' Decision in Scharon v. St. Luke's Episcopal Presbyterian Hosps.

The Minnesota Court of Appeals' determination that the District Court could inquire into the relationship between the Church and its members by application of neutral factors also directly contradicts the Eighth Circuit's decision in Scharon v. St. Luke's Episcopal Presbyterian Hosps. In that case, the Eighth Circuit adhered to Supreme Court rulings and found that application of federal statutes to a church-affiliated hospital would require excessive entanglement with religion. 929 F.2d 360, 362 (8th Cir. 1991). The appellant had been a chaplain of the hospital and was terminated by the director of the department of pastoral care for violating certain canonical laws. Id. at 361. She raised claims of age and sex discrimination and argued that application of the federal statutes would not result in excessive entanglement because the hospital was not a religious institution, and she was a secular employee. Id. at 362. She also argued that excessive entanglement could be avoided because the defendants' claims that religious issues were the basis for the actual motive behind her dismissal could be avoided by focusing solely on the issues of age and sex discrimination. Id. Citing

Catholic Bishop, the Eighth Circuit ruled that to allow the appellant's case to continue *would violate the Establishment Clause of the First Amendment because an examination of the appellant's claims would necessarily involve religious matters.* Id. at 363 (emphasis added). *The hospital had a "substantial religious character" and, while it may have provided many secular services, it was a religious organization with respect to the appellant.* Id. at 362 (emphasis added).

Analogizing to the case at bar, it may also be said that the Church is substantially – if not wholly – religious in character. The underlying purpose of its businesses is to support and develop its various ministries and to allow members to live out their faith, including the belief that one must give himself or herself wholeheartedly to the Church. Each member should strive to live in a manner worthy of his or her calling, serving within the Church without expectation of gain.

The relationship between Rooney and the Church is that between a church member and his church. Without the shared beliefs binding the Church and Rooney, there would be no relationship as Rooney's services are given as a direct and public manifestation of his faith and not for compensation of any kind. Accordingly, any inquiry into that relationship will unavoidably require an examination and evaluation of religious doctrines. Because neutral principles only apply to disputes which do not entail doctrinal examinations or evaluations, such principles cannot apply to the dispute involving the Church. Any inquiry into the Church's relationship with its members therefore constitutes excessive entanglement by secular courts into purely ecclesiastical matters.

C. The Minnesota Court of Appeals' Decision Conflicts with the Decisions of the New Jersey and Minnesota Federal District Courts in Seymour Klagsbrun v. Va'ad Harabonim of Greater Monsey and Farley v. Wisconsin Evangelical Lutheran Synod.

The Minnesota Court of Appeals' determination that the District Court possessed subject matter jurisdiction to hear the case and could apply neutral factors in finding that the Church was a payor of funds directly contradicts the decisions of the federal district courts of New Jersey and Minnesota.

In Seymour Klagsbrun v. Va'ad Harabonim of Greater Monsey, the New Jersey federal district court found that it had no jurisdiction to review the case before it. 53 F.Supp.2d 732, 739 (D.N.J. 1999). An Orthodox Jew and his second wife had brought a libel and slander action against Orthodox rabbis who occupied various leadership positions within the Orthodox Jewish community. Id. at 735. They alleged that the defendants made false and defamatory statements concerning Seymour Klagsbrun's failure to obtain a proper Jewish divorce from his first wife. Id. at 735-36.

The court identified the issue as whether the plaintiffs' defamation claim was ecclesiastical in nature concerning "discipline, faith, internal organization, or ecclesiastical rule, custom, or law," or a purely secular dispute between third parties and a particular defendant, albeit a religiously affiliated organization. Id. at 738 (citing Milivojevich, 426 U.S. at 713). In order to determine whether the dispute was primarily ecclesiastical or secular in nature, the court relied on a Third Circuit case which stated that "this court must determine the nature and extent of the doctrinal relevance underpinning the dispute." Scotts African Union Methodist Protestant Church, 98 F.3d 78, 95 (3rd Cir. 1996). The Va'ad

Harabonim court then concluded that it could not hear the dispute because "to determine the truth or falsity of the defendants' statements, this court must delve dangerously into questions of doctrine and faith[.]" Id. at 739. It reasoned as follows:

> The important point here is that resolution of the factual disputes would require this court to inquire into religious doctrine and practice. Simply because, for example, the question of whether Seymour Klagsbrun actually engaged in bigamy is factual in nature in no way diminishes the need for this court to delve into religious doctrine. As noted above, the issue, using just one example, is whether Seymour Klagsbrun engaged in bigamy *within the meaning of the Orthodox Jewish faith*, which by its very nature necessitates an inquiry into religious doctrine ... the Establishment Clause is implicated whenever courts must interpret, evaluate, or apply underlying religious doctrine to resolve disputes involving religious organizations.

Va'ad Harabonim, 53 F.Supp. 2d at 742 (emphasis in original).

Because the dispute essentially turned on questions of religious doctrine and practice, the court held that neutral principles could not be applied and therefore the court lacked subject matter jurisdiction. Va'ad Harabonim, 53 F.Supp. at 739.

The Minnesota Court of Appeals' decision also conflicts with the decision of the Minnesota federal district court in Farley v. Wisconsin Evangelical Lutheran Synod. That case involved a dispute between a pastor and his church. 821 F.Supp. 1286, 1287 (D.Minn. 1993). The synod had

terminated the pastor and he brought a defamation action against its members, claiming that they had published false and defamatory statements about him during the synod's attempts to remove him from the church. Id. He did not contest the synod's decision to terminate, which he admitted was an ecclesiastical concern protected from court review by the First Amendment. Id. at 1290. Rather, he argued that resolution of his defamation claim would implicate no concern expressed in the First Amendment because an inquiry into the dispute requires no examination of church procedures or ecclesiastical decisions. Id. The Minnesota federal district court disagreed finding that, *because the claim challenged the veracity of the defendants' statements, a judicial determination would require an examination of church doctrine and practices.* Id. (emphasis added). Because resolution of the issues would require an analysis of matters involving the synod's faith and doctrine and thereby implicated the First Amendment, the court concluded that it had no jurisdiction over the matter. See id. at 1288-90.

It follows from Va'ad Harabonim and Farley that the determination in Rooney as to whether the Church is an employer or payor of funds compels an examination of the Church's doctrine and its members' beliefs concerning this issue. As in Farley, because some of the Respondents in this case have challenged the Church's contention that it is not an employer or payor of funds with respect to its members, the District Court's duty is to determine the veracity of the Church's statement. It can only do this by examining the Church's doctrine and beliefs concerning its relationship with its members. The District Court simply cannot disregard the views of the Church and its members on this issue, particularly because it is *their* relationship that is being examined. Moreover, although the Rooney decision implicitly asserts that the traditional indicators of an employment relationship may be applied to determine the

applicability of Minn. Stat. § 518.6111 without delving into ecclesiastical matters, the decision in Va'ad Harabonim instructs that that is insufficient. The determination of the Church's status as an employer or payor of funds must necessarily include an evaluation and analysis of religious doctrines and beliefs concerning its relationship with its members. The religious component of the inquiry cannot be circumvented merely by ignoring the fact that this dispute involves a religious organization and its member because the very foundation of any religious organization is its doctrines and beliefs, and the necessary faithful obedience to the life and practice thereof. Those doctrines and beliefs, by their very nature, include matters concerning the relationship between a member and the organization. *In short, there is simply no way to extricate the religious factors of the dispute from the non-religious factors in order to apply neutral principles of law.* Because neutral principles cannot be applied and because any inquiry into the applicability of Minn. Stat. §518.6111 necessarily involves an examination of the Church's doctrines, the courts plainly lack subject matter jurisdiction over this dispute.

CONCLUSION

Supreme Court review of the decision in Rooney v. Rooney is needed to correct an erroneous and conflicting application of the law regarding the extent of a court's subject matter jurisdiction.

The Rooney decision directly conflicts with this Court's well-established decisions prohibiting inquiries into matters of church governance, laws, and customs. In particular, the Rooney court's determination that neutral factors are applicable to a finding of the Church's status as an employer or payor of funds directly contradicts this Court's decisions in Milivojevich and Jones.

Review of this case by the Supreme Court will clarify whether and to what extent a civil court may examine and inquire into matters which possess a substantial religious component, and what impact such exercise will have on a religious entity's rights under the First Amendment. Such a ruling would reinforce the protections provided to religious organizations under the First Amendment, significantly clarify the boundaries separating church and state, and prevent the intrusion of one into the other as envisioned by the framers of the constitution.

For the reasons stated herein, Petitioner respectfully requests the Court to grant its Petition for Writ of Certiorari to the Minnesota Court of Appeals.

Dated: February 23, 2004

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STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
CASE TYPE: SUPPORT

In Re the Marriage of:

Patricia L. Rooney,

Petitioner,

vs.

Michael T. Rooney,

Respondent,

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND, ORDER FOR JUDGMENT

and,

Christ's Household of Faith,

Court File No. FI-87-23.807
IV-D Case No. 001024415301

Third Party Respondent,

and,

Ramsey County,

Intervenor,

The above-entitled matter came on for hearing before Brad A. Johnson, presiding Child Support Magistrate, at Ramsey County on December 18, 2002, pursuant to the Order dated :September 9, 2002. The record closed on December 18, 2002. The Petitioner was not present, and was represented by Joseph F. Schmidt, Esq., Suite 4, 1204 Harmon Place, Minneapolis, Minnesota 55403. Respondent Rooney was present, and was not represented by counsel. Christopher D. Johnson, Esq., 225 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402 appeared on behalf of Christ's

Household of Faith (CHOF), Third Party Respondent. Amy A. Anderson, Assistant Ramsey County Attorney, and Stacy Runkle, Child Support Officer, appeared on behalf of Ramsey County, Intervenor.

The Child Support Magistrate, upon reviewing the files, affidavits and proceedings herein, and being fully advised, does hereby make the following:

STATEMENT OF THE ISSUES

The issues in this matter are 1.) the determination of CHOF's liability for unpaid income withholding and payments commencing August 20, 1990, to January 9, 2002; as affected by the limitations of Minnesota Statute section 518.61 subd. 5(d); and; 2.) the determination of amounts to be withheld from Respondent Rooney's income.

FINDINGS OF FACT

1. The Order dated September 9, 2002 remanded issues of

- the determination of CHOF's liability for unpaid income withholding and payments commencing August 20, 1990, to January 9, 2002; as affected by the limitations of Minnesota Statute section 518.61 11, subd. 5(d); and;

- the determination of amounts to be withheld from Respondent Rooney's income.

2. The Order dated September 6, 2002, at page 4, authorized the consideration of the "full account review by Ms. Runkle" and the Ramsey County Child Support EnforcementDivision's "analysis of the limitations to be applied under Minnesota Statute section 5 subdivision 5 (d) at the hearing on remand."

I.
RENEWED REQUEST FOR EVIDENTIARY HEARING

3. Counsel for CHOF requested that an additional evidentiary hearing be conducted to determine either a.) the value of the services provided by Respondent Rooney to CHOF, or b) the. value of the services provided by CHOF to Respondent Rooney. The purpose of the hearing would be to determine the amount that should be paid by CHOF.

4. CHOF's request for an evidentiary hearing to address these issues was opposed by Respondent Rooney based upon his assertion that the hearing would necessarily require the impermissible examination of the internal Workings of the church.

5. Counsel for Patricia L. Rooney and counsel for the Ramsey County Child Support Enforcement Division also opposed CHOF's request.

6. CHOF's request for an evidentiary hearing will be denied.

- The first basis for the denial is the objection raised by Respondent Rooney: The valuation of the services provided by Respondent Rooney to CHOF, or the valuation of the services provided by CHOF to Respondent Rooney, would require the close examination of the details, mundane and, sacred, of the relationship between a man and his church.

The focus in this case is really the collection of previously established child support and spousal maintenance obligations that CHOF failed to pay after being served with an income withholding order. The relationship that is being examined is the financial relationship between a 501(d) non-profit corporation

under the Internal Revenue Service Code[1], and the Ramsey County Child Support Enforcement Division. The examination of the relationship between Respondent Rooney and CHOF is not necessary to resolve the issues, and would require an offensive degree of governmental intrusion into the affairs of CHOF and Respondent Rooney.

• The second basis for the denial is the limited scope of the remand. The Order dated September 9, 2002 did not direct that an additional hearing, evidentiary or otherwise, be conducted. All issues that were remanded can be resolved based upon the existing orders for child support and spousal maintenance, the account review, the applicable law, and the argument of counsel.

• The third basis for the denial is the absence of a threshold showing that a hearing to determine the value of services provided and/or received, could possibly result in the valuation of services at less than $24,000.00. The Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree dated October 14, 1988, at page 5, paragraph 20, stated:

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[1] See page 2, paragraph 5 of the Findings of Fact, Conclusions of Law, and Order dated June 13, 2002

"Respondent has the ability to earn at least $24,000.00 per year. were he not a voluntary member of Christ's Household of Faith. The services he provides for Christ's Household of Faith are similar to those of a purchasing agent, and as such the value of his services to the community of Christ's Household of Faith have a value of at least $24,000.00 per year. He has no financial obligation to meet his own needs, and as such he has the ability to contribute to the permanent support of the petitioner."

There is simply no possibility that the value of the services provided by Respondent Rooney to CHOF, or that the value of the services provided by CHOF to Respondent Rooney could be less than $24,000.00.

• The fourth basis for the denial is the nature of this proceeding. As noted in footnote 1 of the Findings of Fact; Conclusions of Law, and Order dated June 13, 2002, this is an enforcement proceeding, and not a modification proceeding. Neither the Petitioner, nor Respondent Rooney, nor the Ramsey County Child Support Enforcement Division nor CHOF, has filed a motion to modify child support or spousal maintenance.[2]

• The fifth basis for the denial is the absence of subject matter jurisdiction in a child support magistrate to modify spousal maintenance. Rule 3 53.01, Subdivision 1, ' of the Expedited Child Support Process Rules states:

"Mandatory Proceedings. Proceedings to establish, modify, and enforce support shall be conducted in the

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[2] This entire proceeding addresses the enforcement of the existing child support and spousal maintenance obligations, and not to the modification of either of those obligations.

expedited process if the case is a IV-D case, except as provided in subdivision 2 and Rule 353.02. Proceedings to enforce spousal maintenance, including spousal maintenance cost-of-living adjustment proceedings, shall, if combined with a support issue, be conducted in the expedited process if the case is a IV-D case, except as provided in subdivision 2 and Rule 353.02."

This section clearly authorizes a child support magistrate to address spousal maintenance enforcement issues. However, Rule 353.01, Subdivision 3, of the Expedited Child Support Process Rules states:

> "Prohibited Proceedings and Issues. The following proceedings and issues shall not be conducted or decided in the expedited process:
>
> (c) establishment or modification of spousal maintenance;"

II.
REQUEST TO CONDUCT DISCOVERY

7. Counsel for CHOF requested an opportunity to conduct further discovery.

8. CHOF's request to conduct further discovery will be denied. The basis for the denial is the limited scope of the remand. The Order dated September 9, 2002 did not direct that additional discovery be conducted. Again, all issues that were remanded can be resolved based upon the existing orders for child support and maintenance, the account review, the applicable law, and the argument of counsel. Additionally, this proceeding has been actively litigated, in the most recent round of proceedings, since mid 2001. The Petitioner conducted discovery early in this round of proceedings, and the disputes regarding the Petitioner's discovery were

addressed in the Findings of Fact, Conclusions of Law, and Order dated February 25, 2002 {Findings, paragraphs 44 to 53; Order, paragraphs 2 and 3}. CHOF has had ample opportunity to conduct discovery, but has simply failed to exercise the right to gather information. This proceeding will not now again be further delayed to permit additional discovery.

III.
REQUEST TO LIMIT PERIOD OF LIABILITY

9. Counsel for CHOF requested that the period for the determination of CHOF"s liability be limited to the period of August 20, 1990 through January 9, 2002, in conformity with the directives of the order dated September 9, 2002. The Petitioner, Respondent Rooney, and the County each agreed. The portions of the County's Affidavit dated December 9, 2002 that address periods before August 20, 1990, or after January 9, 2002, will be disregarded for the purposes of calculation CHOF's liability for past child support and past spousal maintenance.

IV.
THE DETERMINATION OF CHOF's LIABILITY FOR UNPAID INCOME WITHHOLDING AND PAYMENTS COMMENCING AUGUST 20, 1990, TO JANUARY 9, 2002; AS AFFECTED BY THE LIMITATIONS OF MINNESOTA STATUTE SECTION 518.6111, SUED, 5(D)

A.
LIABILITY

10. Prior orders have determined that CHOF is a "payor of funds".

11. The Order for Income Withholding dated May 14,1990 stated as follows:

"CHILD SUPPORT OF $600.52 PER MONTH AND SPOUSAL MAINTENANCE OF $250.00 PER MONTH SHALL BE WITHHELD FROM INCOME, REGARDLESS OF SOURCE OR FROM FUNDS USED TO MAKE IN-KIND PAYMENTS TO OR ON BEHALF OF THE PAYOR, MICHAEL T. ROONEY, PURSUANT TO MINNESOTA STATUTE 518.613, AND FORWARDED BY THE PAYOR OF FUNDS, CHRIST'S HOUSEHOLD OF FAITH OR NORTHSTAR SERVICES, INC., OR BY VERNON BUTLER, JR., MARSHALL DENHAM OR DONALD ALSBURY, AS OFFICERS, DIRECTORS, PASTORS OR ADMINISTRATORS OF THE ABOVE-NAMED PAYOR OF FUNDS, TO THE RAMSEY COUNTY DEPARTMENT OF COMMUNITY SERVICES, ATTENTION: ACCOUNTING DIVISION, 160 EAST KELLOGG BOULEVARD, ST. PAUL, MINNESOTA 55101."

12. The Order for Income Withholding dated May 14, was served upon CHOF, and income withholding was implemented beginning in September of 1990.

13. The income withholding statute, Minnesota Statute §518.6111, subdivision 5, is perfectly clear. There is no ambiguity in the language of the statute that requires interpretation.

14. Minnesota Statute §518.6111, subdivision 5(b) states:

"A payor of funds shall withhold from the income payable to the obligor the amount specified in the order or notice off withholding and amounts specified under subdivisions 6 and 9 and shall remit the amounts withheld to the public authority within seven business days of the date the

obligor is paid the remainder of the income. The payor of funds shall include with the remittance the social security number of the obligor, the case type indicator as provided by the public authority and the date the obligor is paid the remainder of the income. The obligor is considered to have paid the amount withheld as of the date the obligor received the remainder of the income. A payor of funds may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each obligor making payment." (Bold and underline added.)

15. Minnesota Statute §518.6111, subdivision 5(c) states:

"A payor of funds shall not discharge, or refuse to hire, or otherwise discipline an employee as a result of wage or salary withholding authorized by this section. **A payor of funds shall be liable to the obligee for any amounts required to be withheld**. A payor of funds that fails to withhold or transfer funds in accordance with this section is also liable to the obligee for interest on the funds at the rate applicable to judgments under section 549.09, computed from the date the funds were required to be withheld or transferred. A payor of funds is liable for reasonable attorney fees of the obligee or public authority incurred in enforcing the liability under this paragraph. A payor of funds that has failed to comply with the requirements of this section is subject to contempt sanctions under section 518.615. If the payor of funds is an employer or independent contractor and violates this subdivision, a court may award the obligor twice the wages lost as a result of this violation. If a court finds a payor of funds violated this subdivision, the court shall impose a civil fine of not less than $500. The liabilities in this paragraph apply to intentional noncompliance with this section."

16. CHOF is liable for all child support and all spousal maintenance due during the period from August 20, 1990 through January 9, 2002.

B.
AMOUNT

17. At the close of the evidentiary hearing on April 17, 2001, and even after the record closed on May 15, 2041, the only evidence in the record of payment by CHOP of child support or spousal maintenance established the payment of $105.42 in the months of September of 1990; October of 1990; November of 1990; December of 1990; and January of 1991. All prior decisions have been issued based upon the evidence that seemed to indicate that only $527.10 had been paid in over a decade.

18. The County's Affidavit dated December 9, 2002 presents a vastly different scenario.[3]

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[3] IF I KNEW THEN WHAT I KNOW NOW. The County's Affidavit dated December 9, 2002 establishes that payments totaling $11,103.22 came from CHOP, and that payments in the amount of $17,326.18 are believed to have come from CHOF. The payments from CHOF that totaled $11,103.22 spanned the period from February 1, 1991 through April 9, 1997. The payments of $17,326.18 that are believed to have come from CHOF spanned the period from November 10, 1988 through September 4, 1990. This information would have been highly relevant to the determination of the issues of CHOF's status as a "payor of funds", and to CHOF's status as an "employer". In fact, this information may have been :determinative of those issues, and certainly would have been determinative of whether CHOF waived its right to an evidentiary hearing. The regular and unwavering payment of funds by CHOF from February 1, 1991 through June 6, 1996 would have been construed to be a waiver of CHOF's right to

19. Review of the County's Affidavit dated December 9, 2002 establishes that the child support arrears for the period from August 20, 1990 though January 9, 2002 are $100,976.82. This amount was established . by starting with the credit of $170.08 in August of 1990, and reviewing amounts due and amounts paid through December 31, 2001, and the interest.[4] As of December 31, 2001, a child support arrearage of $100,526.43 existed. This calculation includes interest that was charged beginning January 1, 1997. During the first half of January of 2002, another $45.0.39 was due (one-half of the monthly obligation of $900.78). The total child support arrearge due during the period from August 20, 1990 though January 9, 2002 is $100,976.82. Judgment will be granted in favor of Patricia L. Rooney, and against Christ's Household of Faith, in the amount of $100,976.82 for child support arrears.

20. Review of the County's Affidavit dated December 9, 2002 establishes that the spousal maintenance arrears for the period from August 20, 1990 though January 9, 2002 are $39,128.00. This amount was established by starting with the

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contest income withholding. An evidentiary hearing would then not have been necessary. However, as things stand, these facts provide additional, and overwhelming, support for the previous legal conclusions that CHOF is a "payor of funds", and that CHOF is an "employer". The tardy revelation of these facts would not change any of the "Conclusions of Law" or "Order" provisions of previous orders.
The failure of the Ramsey County Attorney's Office to produce this information at the hearing on April 17, 2001 is simply beyond comprehension.

[4] The exclusion of portions of the account review prior to August of 1990 does not change the interest calculation because there was no outstanding balance in August of 1990.

arrearage as of December 31, 2001. As of December 31, 2001, $40,072.00 was due as spousal maintenance. During the first half of January of 2002, another $173.00 was due (one-half of the monthly obligation of $346.00). The total spousal maintenance due during the period from August 20, 1990 though January 9, 2002 is $40,245.00.[5] During this period of time, $0.00 was paid toward spousal maintenance. The spousal maintenance due from January 1, 1990 through August 31, 1990 ($1,290.00) was then subtracted. The spousal maintenance arrearage for the period from August 20, 1990 though January 9, 2002 is $38,955.00. Judgment will be granted in favor of Patricia L. Rooney, and against Christ's Household of Faith, in the amount of $38,955.00 for spousal maintenance arrears.

V.
THE DETERMINATION OF THE DETERMINATION OF AMOUNTS TO BE WITHHELD FROM RESPONDENT ROONEY'S INCOME.

21. Again, the income withholding statute, Minnesota Statute §518.6111, subdivision 5, is perfectly clear. There is no ambiguity in the language of the statute that requires interpretation.

22. Minnesota Statute §518.6111, subdivision 5(b) states:

"**A payor of funds shall withhold from the income payable to the obligor the amount specified in the order** or notice of withholding and amounts specified under subdivisions 6 and 9 and shall remit the amounts withheld to the public authority within seven business days of the date the 9bligor is paid the remainder of the income. The payor of funds shall include with the remittance the social security number of the obligor, the case type indicator as provided by

[5] Interest is not charged on spousal maintenance.

the public authority and the date the obligor is paid the remainder of the income. The obligor is considered to have paid the amount withheld as of the date the obligor received the remainder of the income. A payor of funds may combine all amounts withheld from one pay period into one payment to each public authority, but shall separately identify each obligor making, payment." (Bold and underline added.)

23. There is no indication that CHOF has ever been instructed to withhold anything other than the amount previously recited in the Order for Income Withholding dated May 14, 1990, as increased by cost of living adjustments.

24. Due to cost of living adjustments, child support is now due at the rate of $900.78 per month, and spousal maintenance is due at the rate of $372.00 per month. These obligations last increased on May 1, 2002 pursuant to a Cost of Living Adjustment.

25. It must again be emphasized that this is an enforcement action only.[6]

26. It is necessary to determine Respondent Rooney's disposable income to determine the amount that may be withheld under the Consumer Credit Protection Act, 15 USC 1673(b), as referenced in Minnesota Statute section 5 subd. 9, or the provisions of Minnesota Statute section 5 subd. 5(d).

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[6] The failure of the Respondent to file a motion to modify child is hard to understand. At the time of the dissolution, there were eight minor children of the parties. In all likelihood, child support is now payable for only one child, David Addison Rooney, born September 1 This fact alone would result in a threshold determination that a modification of child support is warranted.

27. The determination of the maximum amount that may be withheld under the limitations of the Consumer Credit Protection Act is based upon the determination of the debtor's disposable income. For Respondent Rooney, the most recent determination of his income is included in the Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree dated October 14, 1988. His net monthly income was determined to be $1,539.80. His disposable income for the purpose of the Consumer Credit Protection Act is $1,539.80.[7]

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[7] Respondent Rooney is presumed to have the ability to pay the ordered child support. Minnesota Statute section 518.24 states:

> Security; Sequestration; Contempt. In all cases when maintenance or support payments are ordered, the court may :require sufficient security to be given for the payment of them according to the terms of the order. Upon neglect or refusal to give security, or upon failure to pay the maintenance or support, the court may sequester the obligor's personal estate and the rents and profits of real estate of the obligor, and appoint a receiver of them. The court may cause the personal estate and the rents and profits of the real estate to be applied according to the terms of the order. The obligor is presumed to have an income from a source sufficient to a the maintenance or support order. A child support or maintenance order constitutes prima facie evidence that the obligor has the ability to a the award. If the obligor disobeys the order, it is prima facie evidence of contempt. The court may cite the obligor for contempt under this section, section 518.617, or chapter 588." (Underline added.)

This principle was embraced in the recent case of Crockarell v. Crockarell, 631 N.W.2d 829, 833, (Minn.App. 2001) where the court stated that "[a] child-support order constitutes prima facie evidence that the obligor has the ability to pay the award. Mini. Stat. § 518.24 (2000).

Under the provisions of the Consumer Credit Protection Act, when arrearages exist and the debtor is supporting other dependents,[8] fifty-five percent of his disposable income may be collected. Based upon the fifty-five percent limitation under the Consumer Credit Protection Act, and disposable income of $1,539.80, CHOF will be ordered to withhold the amount of $846.89. per month.

28. This determination controls only the amounts that may be collected each month. This determination is not a modification of the existing child support or spousal maintenance obligations, and does not limit the ultimate liability of Respondent Rooney or of CHOF for all amounts due as past, current, and future child support or spousal maintenance Based upon the Findings of Fact, the Child Support Magistrate makes the following:

Disobeying the award is prima facie evidence of contempt. Id. The obligor has the burden to prove inability to comply with the order. Engelby, 479 N.W.2d at 426."

Respondent Rooney is presumed to have the ability to pay the child support and spousal maintenance amounts set in the in the Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree dated October 14, 1988.

[8] Testimony at earlier hearings established that Respondent Rooney is married and is the father of additional children. There is an issue as to whether Respondent Rooney, or CHOF, supports these later born children. However, for the purpose of determining the applicable percentage of disposable income that may be collected though income withholding, Respondent Rooney, and not CHOF, will be determined to support these later born children.

CONCLUSIONS OF LAW

1. CHOF's request for an evidentiary hearing will be denied based upon the objection raised by Respondent Rooney; the limited scope of the remand; the absence of a threshold showing that the value of services provided and/or received, could possibly be less than $24,000.00; the nature of this proceeding as an enforcement proceeding; and the absence of subject matter jurisdiction in a child support magistrate to modify spousal maintenance

2. CHOF's request to conduct further discovery will be denied.

3. The determination of CHOF's liability for past child support . and past spousal maintenance will be limited to the period of August 20, 1990 through January 9, 2002.

4. CHOF is a "payor of funds" and is liable for all past child support and all past spousal maintenance due during the period from August 20, 1990 through January 9, 2002, pursuant to the provisions of Minnesota Statute §518,6111, subdivisions 5(b) and(c).

5. Judgment will be granted in favor of Patricia L. Rooney, and against Christ's Household of Faith, in the amount of $100,976.82, for child support arrears for the period from August 20, 1990 through January 9, 2002.

6. Judgment will be granted in favor of Patricia L. Rooney, and against Christ's Household of Faith, in the amount of $38955.00, for spousal maintenance arrears for the period from August 20, through January 9, 2002.

7. CHOF will be ordered to withhold the amount of $846.89 per month for the payment of child support and spousal maintenance.

Based upon the Findings of Fact, and Conclusions of Law, the Child Support Magistrate makes the following:

ORDER

1. CHOF's request for an additional evidentiary hearing is denied.

2. CHOF's request to conduct further discovery is denied.

3. The determination of CHOF's liability for past child support and past spousal maintenance is limited to the period of August 20, 1990 through January 9, 2002.

4. Beginning, January 1, 2003, and continuing each month thereafter, CHOF shall withhold the amount of $846.89 per month for the payment of child support and spousal maintenance.

5. Judgment is granted in favor of Patricia L.Rooney, and against Christ's Household of Faith, in the amount of $100,976.82 for child support arrears for the period from August 20, 1990 through January 9, 2002.

6. Judgment is granted in favor of Patricia L.Rooney, and against Christ's Household of Faith, in the amount of $38,955.00 for spousal maintenance arrears for the period from August 20, 1990 through January 9, 2002.

OTHER PROVISIONS

7. All payments ordered shall be immediately withheld by the Defendant's present and future employer(s) or other payor(s) of funds in accordance with Minn. Stat. §518.6111.

8. Until income withholding takes effect, all payments should be made payable to Minnesota Child Support Payment Center and sent to:

Minnesota Child Support Payment Center
P0 Box 64326
St. Paul, MN 55164-0326

9. The attached Appendix A is incorporated and made a part of this order. The Cost of Living Adjustment will be determined by using the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all urban consumers (CPI-U).

10. Unless otherwise ordered, all parties shall notify the other party, the Court, and the County Child Support Office of the following within ten (10) days of any change: their residential and mailing address, telephone number, driver's license number, social security number and name, address, and telephone number of employer. Any later actions brought or notices sent in this case for which personal service is not required may be sent to the address given for the parties in the Findings of Fact, or to the most recent address provided by the parties to the County.

11. Service of a copy of this order shall be made upon the parties by first class U.S. mail at the last known address for both parties, or upon their attorneys, which shall be due and proper service for all purposes.

LET JUDGMENT BE ENTERED ACCORDINGLY.

s:/ Brad Johnson
BRAD A. JOHNSON
Child Support Magistrate

Dated: January 18, 2003

I HEREBY CERTIFY THAT THE FACTS AND ORDER SET FORTH ABOVE CONSTITUTE THE JUDGMENT AND DECREE OF THIS COURT.

s:/ Tama L Hall
Court Administrator

January 21, 2003
Date of Filing

s:/ Eileen Krenna
Deputy Court Administrator

FORM 3. APPENDIX A

NOTICE IS HEREBY GIVEN TO THE PARTIES:

I. PAYMENTS TO PUBLIC AGENCY. According to Minnesota Statutes, section 518.551, subdivision 1, payments ordered for maintenance and support must be paid to the Minnesota child support payment center as long as the person entitled to receive the payments is receiving or has applied for public assistance or has applied for support and maintenance collection services. Parents mail payments to: P.O. Box 64326, St. Paul, MN 55164-0326. Employers mail payments to: P.O. Box 64306, St. Paul, MN 55164.

II. DEPRIVING ANOTHER OF CUSTODIAL OR PARENTAL RIGHTS -- A FELONY. A person may be charged with a felony who conceals a minor child or takes; obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or parenting time rights), according to Minnesota Statutes, section 609.26. A copy of that section is available from any court administrator.

III: NONSUPPORT OF A SPOUSE OR CHILD - CRIMINAL PENALTIES. A person who fails to pay court-ordered child support or maintenance may be charged with a crime, which may include misdemeanor, gross misdemeanor, or felony charges, according to Minnesota Statutes, section 609.375. A copy of that section is available from any district court clerk.

IV. RULES OF SUPPORT, MAINTENANCE, PARENTING TIME.

A. Payment of support or spousal maintenance is to be as ordered, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

B. Payment of support must be made as it becomes due; and failure to secure or denial of parenting time is NOT an excuse for nonpayment, but the aggrieved party must seek relief through a proper motion filed with the court.

C. Nonpayment of support is not grounds to deny parenting time. The party entitled to receive support may apply for support and collection services, file a contempt motion, or obtain a judgment as provided in Minnesota Statutes, section 548.091.

D. The payment of support or spousal maintenance takes priority over payment of debts and other obligations.

E. A party who accepts additional obligations of support does so with the full knowledge of the party's prior obligation under this proceeding.

F. Child support or maintenance is based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made throughout the year as ordered.

G. If the obligor is laid off from employment or receives a pay reduction, support may be reduced, but only if a motion to reduce the support is served and filed with the court. Any reduction will take effect only if ordered by the court and may only relate back to the time that the motion is filed. • If a motion is not filed; the support obligation will continue at the current level. The court is not permitted to reduce support retroactively, except as provided in Minnesota Statutes, section 518.64, subdivision 2, paragraph (d).

H. A Parental Guide to Making Child-Focused Visitation Decisions is available from any court administrator.

I. The nonpayment of support may be enforced through the denial of student grants; interception of state and federal tax refunds; suspension of driver's, recreational, and occupational licenses; referral to the department of revenue or private collection agencies; seizure of assets, including bank accounts and other assts held by financial institutions; reporting to credit bureaus; interest charging, income withholding, and contempt proceedings; and other enforcement methods allowed by law.

V. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3. UNLESS OTHERWISE PROVIDED BY THE COURT:

A. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

B. Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's

welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

C. In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

D. Each party has the right of reasonable access and telephone contact with the minor children.

VI. WAGE AND INCOME DEDUCTION OF SUPPORT AND MAINTENANCE. Child support and I or spousal maintenance may be withheld from income, with or without notice to the person obligated to pay, when the conditions of Minnesota Statutes, section 518.611 l, have been met. A copy of that section is available from any court administrator.

VII. CHANGE OF ADDRESS OR RESIDENCE. Unless otherwise ordered, each party shall notify the other party, the court, and the public authority responsible for collection, if applicable, of the following information within ten days of any change: residential and mailing address, telephone number, driver's license number, social security number, and name, address, and telephone number of the employer.

VIII. COST OF LIVING INCREASE OF SUPPORT AND MAINTENANCE. Child support and l or spousal maintenance may be adjusted every two years based upon a change in the cost of living (using the U.S. department of labor, bureau of labor statistics, consumer price index Mpls. St. Paul, for all urban consumers (CPI-U), unless

otherwise specified in this order) when the conditions of Minnesota Statutes, section 518.641, are met.. Cost of living increases are compounded. A copy of Minnesota Statutes, section 518.641, and forms necessary to request or contest a cost of living increase are available from any court administrator.

IX. JUDGMENTS FOR UNPAID SUPPORT; INTEREST. ACCORDING TO MINNESOTA STATUTES, SECTION 548.091:

A. If a person fails to make a child support payment, the payment owed becomes a judgment against the person responsible to make the payment by operation of law on or after the date the payment is due, and the person entitled to receive the payment or the public agency may obtain entry and docketing of the judgement **without notice** to the person responsible to make the payment.

B. Interest begins accruing on a payment or installment of child support whenever the unpaid amount due is greater than the current support due.

X. JUDGMENTS FOR UNPAID MAINTENANCE. A judgment for unpaid spousal maintenance may be entered and docketed when the conditions of Minnesota Statutes, section 548.091, are met. A copy of that section is available from any court administrator.

XI. ATTORNEY FEES AND COLLECTION COSTS FOR ENFORCEMENT OF CHILD SUPPORT. A judgment for attorney fees and other collection costs incurred in enforcing a child support order will be entered against the person responsible to pay support when the conditions of Minnesota Statutes, section 518.14, subdivision 2, are met. A copy of that section and forms necessary to

request or contest these attorney fees and collection costs are available from any court administrator.

XII. PARENTING TIME EXPEDITOR PROCESS. On request of either party or on its ovum motion, the court may appoint a parenting time expeditor to resolve parenting time disputes under Minnesota Statutes, section 518.1751. A copy of that section and a description of the expeditor process is available from any court administrator.

XIII. PARENTING TIME REMEDIES AND PENALTIES. Remedies and penalties for wrongful denial of parenting time are available under Minnesota Statutes, section 518.175, subdivision 6. These include compensatory parenting time; civil penalties; bond requirements; contempt; and reversal of custody. A copy of that subdivision and forms for requesting relief are available from any court administrator.

STATE OF MINNESOTA
IN COURT OF APPEALS
A03-53

In re the Marriage of

Patricia L. Rooney, petitioner,
Respondent,

vs.

Michael T. Rooney,
Respondent,

and

Christ's Household of Faith, third-party respondent,
Appellant,

and

Ramsey County, intervenor,
Respondent.

Filed September 16, 2003
Affirmed in part, reversed in part, and remanded
Robert H. Schumacher, Judge
Concurring in part, dissenting in part, Randall, Judge

Ramsey County District Court
File No. F 1-87-23807

Joseph F. Schmidt, The Kenosha, Suite 4, 1204 Harmon Place, Minneapolis, MN 55403 (for respondent Patricia L. Rooney)

Michael T. Rooney, 825 Marshall Ave., St. Paul, MN 55 104 (pro se respondent)

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Considered and decided by Schumacher, Presiding Judge, Randall, Judge, and Kalitowski, Judge.

SYLLABUS

1. A religious institution providing in-kind benefits to a church member is a "payor of funds" under Minn. Stat. § 518.6111 (2002).

2. A district court has subject-matter jurisdiction to determine whether a religious entity is a "payor of funds" for child-support withholding purposes pursuant to Minn. Stat. § 518.6111 (2002), and may apply the statute without violating the Minnesota or federal constitutions.

3. The district court did not err by deciding a remand under a statute replacing the statute under which the remand was originally ordered.

OPINION

ROBERT H. SCHUMACHER, Judge

Appellant Christ's Household of Faith (CHOF) challenges the district court's determination that it is a "payor of funds" under Minn. Stat. § 518.6111 (2002), for child support withholding purposes, contending that the application of that statute to CHOF results in excessive governmental entanglement in CHOF's religious affairs in violation of the federal and state constitutions. CHOF also challenges the district court's determinations that it could decide a remand under the statute replacing the statue under which the remand was ordered, that a religious institution providing in kind benefits to a church member can be a "payor of funds" under Minn. Stat. § 518.6111, that CHOF's withholding obligation commenced in 1990, and that lathes does not apply to this case. CHOF further disputes the amount of the support and maintenance arrears for which it is responsible. We affirm in part, reverse in part, and remand.

FACTS

Respondents Patricia L. Rooney and Michael T. Rooney were married in 1964 and became members of CHOF in 1966. The church's doctrine requires that members devote themselves and any property they have to the church, sacrificing all rights to payment for services given and relinquishing rights to all material possessions. In return, the church supports its members.

In 1987 Patricia Rooney left the church. The parties' marriage was dissolved in 1988. Patricia Rooney was awarded custody of four of the couple's minor children, and Michael Rooney (Rooney) was awarded custody of two of the

couple's minor children. It is undisputed that Rooney performed and continues to perform services for CHOF and CHOF-related entities. In the dissolution judgment, the district court estimated Rooney's earning capacity to be $24,000. Rooney was ordered to pay monthly child support of $600.52 and monthly spousal maintenance of $250. At the time judgment was entered, Patricia Rooney was receiving welfare assistance from respondent Ramsey County. The judgment imposed on her no obligation to pay support to Rooney.

CHOF is a non-profit corporation operating a number of businesses, including Northstar Services. As a 501(d) corporation, CHOF is required by the IRS to provide each of its members with a partnership K-1 tax form. The K-1 form represents the division of the gross taxable income of CHOF by the number of its members. The record indicates that Rooney does not receive compensation from CHOF for his services other than room, board, certain in-kind benefits, and a $39.80 biweekly stipend that other CHOF members, even those not working, receive. Rooney's 1994 K-1 tax form shows income of $4,342.

In 1990, the district court ruled that CHOF was Rooney's "employer" under Minn. Stat. § 518.611 (1990), and ordered CHOF to perform income withholding to pay Rooney's child support and spousal maintenance obligations. Rooney was in arrears immediately on the $850.52 per month that he was ordered to pay for child support and spousal maintenance. In August 1990, CHOF's attorney sent the county a letter stating that it could not comply with all aspects of the withholding order, that CHOF and other CHOF-related entities and persons named in the withholding order were not parties to the proceeding but were not objecting to the withholding order. Thereafter, CHOF made some payments on Rooney's behalf.

In 1991, the district court affirmed a referee's order directing entry of judgment for support and maintenance arrears against CHOF and other CHOF related entities and persons. CHOF appealed to this court and argued that it was not "an employer" under Minn. Stat. § 518.611 (1990). This court reversed and remanded for a determination of whether CHOF had waived its right to an evidentiary hearing, whether CHOF was an employer, and what the total amount of CHOF's withholding obligations should be. *Rooney v. Rooney*, 473 N.W.2d 545 (Minn. App. 1991) (*Rooney I*). No action was taken on the remand by the district court, CHOF, the parents, or the county until 2002.

In 1996, Rooney brought a motion to amend his child support and spousal maintenance obligations on the grounds that his circumstances had changed. Patricia Rooney moved for contempt based on claimed arrearages and to increase both child support and spousal maintenance. Rooney's motion was denied without a determination of whether CHOF was his employer. In 1997, the legislature repealed Minn. Stat. §518.611 under which the remand had been ordered and replaced it with Minn. Stat. § 518.6111 (Supp. 1997).

The evidentiary hearing ordered by this court in 1991 was held in June 2002. The child support magistrate found that CHOF was an employer as well as a "payor of funds" for purposes of Minn. Stat. § 518.6111 (2002), and ordered judgment for arrearages against CHOF back to January 2002, when CHOF was purportedly "joined" as a party to the case. CHOF sought review of this decision by the district court. The district court affirmed the magistrate's "employer" and "payor-of-funds" rulings, ruled that CHOF was responsible for arrearages dating back to the date it was served with the 1990 order for income withholding, and remanded the matter to the child support magistrate for a calculation of all arrearages. The resulting order found that CHOF, as Rooney's "employer" and as a "payor of funds" was responsible for

$100,976.82 in support arrearages, and an additional $38,955.00 in maintenance arrearages. All arrearages of child support and maintenance were calculated based on the amounts ordered in the 1988 dissolution. CHOP appeals.

ISSUES

1. Can the district court exercise subject-matter jurisdiction over a claim against a church for compliance with a child-support withholding statute without violating the federal or state constitution?

2. Did the district court exceed the scope of its remand by addressing whether CHOF was a "payor of funds" under Minn. Stat. § 518.6111(2002)?

3. Did the district court err in ruling that CHOF was a "payor of funds" under Minn. Stat. § 518.6111(2002)?

4. Did the district court abuse its discretion by refusing to invoke laches?

5. Did the district court err in holding that CHOF's liability for withholding started in 1990.

6. Did the district court err in the calculation of Rooney's arrears and the amount to be prospectively withheld by CHOF?

ANALYSIS

1. Whether subject-matter jurisdiction exists is a legal question that this court reviews de novo. *Kellar v. Von Holtum*, 605 N.W.2d 696, 700 (Minn. 2000). CHOF argues that the application of the Minnesota child-support withholding statute in this case requires an unconstitutional inquiry into the relationship between the church and its

members, and that the district court does not have subject-matter jurisdiction over such an inquiry. We disagree, and conclude that the district court may apply Minn. Stat. §518.6111 (2002), to CHOF without excessive entanglement in CHOF's religious affairs.

The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..." U.S. Const. Amend. I. The First Amendment applies to the states by virtue of the Fourteenth Amendment. *Cantwell v. State of Connecticut*, 310 U.S. 296, 303, 60 S. Ct. 900, 903 (1940).

To avoid violating the establishment clause, a state action must (1) have a secular purpose, (2) neither inhibit nor advance religion in its primary effect, and (3) not foster excessive governmental entanglement with religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612, 91 S. Ct. 2105, 2111 (1971). It is undisputed that this case involves a state action, the imposition on CHOF of the withholding obligation, that has a secular purpose, securing the payment of Rooney's support and maintenance obligations, that is religiously neutral. At issue in this case is whether imposition of the withholding obligation on CHOF excessively entangles the county with religion where determining the propriety of imposing a withholding obligation requires an examination of Rooney' relationship with CHOF to determine whether CHOF is an "employer" or "payor of funds" for purposes of Minn. Stat. §518.6111 (2002). On this record, we conclude that there is no unconstitutional entanglement.

Under the entanglement doctrine, the state must avoid inquiry into the internal decisionmaking and governance of the religious institution. *Jones v. Wolf*, 443 U.S. 595, 602, 99 S. Ct. 3020, 3025 (1979). There is no impermissible entanglement, however, when the dispute can be resolved

according to "neutral principles of law." *Id.* at 602-04, 99 S. Ct. at 3025; see *Odenthal v. Minn. Conference of Seventh-Day Adventists*, 649 N.w.2d 426, 435 (Minn. 2002) (applying neutral principles test to negligent counseling claim against member of clergy). These neutral principles of law must be developed and applied without particular regard to religious institutions or doctrine. *Jones*, 443 U.S. at 602-04, 99 5. Ct. at 3025-26.

Here, the withholding statute is a neutral law applying to all Minnesota employers. The withholding statute articulates a process by which a county may secure child support from an employer. As in J.M. v. Minn. Dist. Council of the Assemblies of God, whether the relationship between CHOF and Rooney makes CHOF subject to Minn. Stat. § 518.6111 (2002), can be determined by religiously neutral factors. J. M. v. Minn. Dist. Council of the Assemblies of God, 658 N.W.2d 589, 595-96 (Minn. App. 2003) (applying neutral factors of employment law to determine whether church was pastor's employer in sexual exploitation suit). CHOF argues that the state should not impose its secular view of CHOF's relationship on its members. But, as Jones demonstrates, the point of the neutral principles test is to apply a purely secular perspective to a dispute, without inquiring into religious doctrine or practice. Jones, 443 U.S. at 604, 99 S. Ct. at 3026. Because a determination of whether a payor/payee relationship exists between CHOF and Rooney can be accomplished by application of neutral factors and principles of law, we conclude that the court has subject-matter jurisdiction.

The Minnesota Freedom of Conscience Clause provides:

> The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall

> never be infringed; ... nor shall any control of or interference with the rights of conscience be permitted.

Minn. Const. art. I, § 16. The Minnesota Constitution affords religious protections broader than those contained in the federal constitution. *State v. Hershberger*, 462 N.W. 2d 393, 397 (Minn. 1990). To excuse a law's imposition on religious freedom under the Minnesota Constitution, the government's interest must be one of peace, safety or against an act of licentiousness. *Murphy v. Murphy*, 574 N.W.2d 77, 81 (Minn. App. 1998).

Minnesota courts apply a balancing test when analyzing whether a state regulation infringes a right under the freedom of conscience clause of the Minnesota Constitution. *Hill-Murray Fed'n of Teachers v. Hill-Murray High Sch.*, 487 N.W.2d 857, 865 (Minn. 1992). The courts ask if (a) the objector's belief is sincerely held; (b) the state regulation burdens the free exercise of religious beliefs; (c) the state interest in the regulation is compelling; and (d) the state regulation uses the least restrictive means to effectuate a compelling interest. *Id.* There is no dispute that CHOF's beliefs are sincerely held. We therefore limit our analysis to the remaining three factors, and conclude that applying Minn. Stat. § 518.6111 (2002), to CHOF does not unduly impose on CHOF's religious freedom.

CHOF argues that the withholding statute compromises the church's faith, hinders religious practice and requires the church to act contrary to its doctrine. To determine the burden on CHOF, we must look at whether CHOF is forced to change its religious conduct or philosophy due to imposition of the statute.

In *Hill-Murray*, the Minnesota Supreme Court found that application of the Labor Relations Act to secular

employees of a parochial school did not violate the First Amendment because the terms and conditions of employment were not related to church doctrine and were negotiable. *Id.* at 866. Furthermore, interference with school authority was minimal, the school retained the power "to require compliance with religious doctrine," and any person failing to follow the religious standards could be removed. *Id.* In *Odenthal*, the Minnesota Supreme Court held that a statute regulating unlicensed mental health care professionals did not force the church to change its religious conduct or philosophy because clergy members retained the right to practice counseling and the church continued to retain the power over the clergy's compliance with church doctrine. *Odenthal*, 649 N.W.2d at 442.

Here, CHOF requires that its members relinquish their possessions and most external sources of income. The church then provides support for those members. A consequence of doing so is that it may later be required to meet child-support obligations on behalf of a member. Indeed, the record shows that CHOF has made numerous child-support payments on behalf of Rooney, and continues to do so on behalf of other church members. CHOF does not contend that these payments were a burden on its right to free exercise of religion. CHOF remains free to require its members to give their possessions and income to the church. Further, because CHOF chooses to exist as a non-profit corporation, it is subject to tax and corporate law that may not apply if it existed as a church only. CHOF does not argue that requiring it to follow these laws is an excessive burden. We do not see that applying Minn. Stat. § 518.6111 (2002), is any greater burden on CHOF than requiring it to provide its members with K-1 tax forms. Withholding income from Rooney and forwarding this amount to Ramsey County is not a complicated bookkeeping task. We conclude that applying the withholding statute to CHOF does not excessively burden CHOF's right to exercise its religious beliefs.

As we have noted, the Minnesota Constitution provides greater protections to the practice of religion than the federal constitution. Hershberger, 462 N.W.2d at 397. Thus, if applying Minn. Stat. § 518.61 11 to CHOF does not violate the Minnesota Constitution, it also does not violate the lesser protections of the federal constitution. The Free Exercise Clause of the United States Constitution affords the absolute right to hold any religious belief, but it does not absolutely protect religiously-based conduct. *Employment Div., Dept of Human Resources of Oregon v. Smith*, 494 U.S. 872, 877-79, 110 S. Ct. 1595, 1599-1600 (1990). An individual's religious beliefs may not excuse a failure to comply with otherwise valid laws concerning conduct subject to state regulation. *Id.* at 878-79, 110 S. Ct. at 1600. An individual cannot seek First Amendment exemption from a neutral law of general applicability. *Id.* We have observed that Minn. Stat. § 518.6111 (2002), is applicable to all obligors and their employers, without respect to religion. This law applies generally; it is neither directed toward a religious entity, nor does it affect religious entities differently than others in similar economic relationships. We conclude that requiring CHOF to comply with Minn. Stat. § 518.6111 does not infringe on CHOF's right to free exercise of religion under the federal constitution.

Following this court's decision in *Murphy*, the compelling nature of the state's interest in securing child support from Rooney cannot be challenged. *Murphy*, 574 N.W.2d at 82 (stating "[w]e hold the state has a compelling interest in assuring parents provide primary support for their children"). CHOF argues that this interest does not extend beyond Rooney to the church. We disagree. As Ramsey County notes, CHOF's argument would lead to the rather bizarre conclusion that the state has a compelling interest in ordering child support to be paid by an obligor, but not in collecting it. The state has a compelling interest in securing child support from Rooney, and this interest *must* extend to

CHOF, or any other entity that can be required to perform income withholding for Rooney, if that interest is to have any meaning.

CHOF argues that the state did not use the least restrictive means by which to achieve its interest in securing child support for the Rooney children. The least restrictive means of securing child support is for the obligor to pay support voluntarily. Rooney's court-ordered obligations, however, have not been paid voluntarily. CHOF argues that the county and Patricia Rooney were under an obligation to pursue Michael Rooney's part-time employers and garnish his social security benefits before the church is approached. But the record indicates that there have been tax intercept and wage withholding actions against Rooney's part-time employers since 1996. As soon as Ramsey County knew that Rooney was collecting social security, it sent out a withholding notice. Ramsey County has garnished Rooney's "other employers" and has filed a withholding notice with the Social Security Administration. Rooney's driver's license was revoked in an attempt by Ramsey County to compel him to meet his child support obligation. None of these measures has succeeded.

Ramsey County has attempted a number of ways to secure Rooney's child support payments without success, and on this record pursuing CHOF under Minn. Stat. § 518.6111 (2002), is the least restrictive means remaining available to achieve this goal. Because there is no undue imposition on CHOF's right to religious freedom, we need not address whether Minn. Stat. § 518.6111 falls into the "peace, safety, or against licentiousness" exception. *Murphy*, 574 N.W.2d at 81.

2. On remand from this court, the district court found that for purposes of Minn. Stat. § 518.61 CHOF was both Rooney's "employer" and a "payor of funds." Noting that Rooney I remanded for a determination of whether CHOF was Rooney's "employer," CHOF argues that the district court exceeded the scope of its remand by addressing whether CHOF was a "payor of funds." We disagree.

On remand, a district court must "execute [a reviewing court's] mandate strictly according to its terms" and lacks power to "alter, amend, or modify [that] mandate." *Halverson v. Village of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982). There is, however, "a well-recognized exception" to this rule. *McClelland v. McClelland*, 393 N.W.2d 224, 226 (Minn. App. 1986), *review denied* (Minn. Nov. 17, 1986). Under that exception, courts apply an amended statute on remand if (a) the statute is amended between the time an appellate court remands a case and the time the district court renders its decision on remand; and (b) doing so will not alter rights that had matured or become unconditional, impose new and unanticipated obligations on a party, or work some other injustice. *Id.* at 226-27.

Rooney I remanded for a determination of whether CHOF was Rooney's "employer" for purposes of the then-existing Minn. Stat. § 518.611 (1990). *Rooney I*, 478 N.W.2d at 547. Before the remand was decided, however, the legislature repealed Minn. Stat. § 518.611 and replaced it with Minn. Stat. § 518.6111 (Supp. 1997). See 1997 Minn. Laws ch. 203, art. 6, § 93 (repealing Minn. Stat. § 518.611 (1996)); 1997 Minn. Laws ch. 203, art. 6, § 48 (enacting Minn. Stat. §518.6111 (Supp. 1997)). *McClelland's* change-in-the-law prong is satisfied here.

For two reasons, we conclude that *McClelland's* lack-of-prejudice prong is also satisfied. First, "[t]here is no vested right in an existing law nor in an action until final judgment

has been entered therein." *Holen v. Minneapolis-St. Paul Metro. Airports Comm'n*, 250 Minn. 130, 136, 84 N.W.2d 282, 287 (1957) (emphasis in original); see McClelland, 393 N.W.2d at 226-27 (applying Holen in appeal after remand in family-law context). Here, *Rooney* I remanded the case. The "reconsideration of a case on remand (and a subsequent appeal) is a continuation of the original proceeding." *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 720 (Minn. 1987). No final judgment had been entered, and CHOF had no right to the resolution of the case under Minn. Stat. § 518.61 1 (1990), and the *Rooney I* decision based on that law.

Second, while *Rooney I* remanded for a determination of whether CHOF was Rooney's "employer," that remand was ordered under Minn. Stat. § 518.611 (1990), which required an "employer or payor of funds" to withhold the relevant amounts, but defined neither "employer" nor "payor of funds." Minn. Stat. § 518.611, subd. 2(b) (1990). The 1997 legislation included a definition of "payor of funds" which has not been altered since it was adopted. *Compare* Minn. Stat. § 51 subd. 1(b) (Supp. 1997) (original definition of "payor of funds") with Minn. Stat. § 5 subd. 1(b) (2002) (current definition of "payor of funds"). Statutory amendments clarifying or defining previously undefined terms may be read into a statute retroactively. *Carlson v. Lilyerd*, 449 N.W.2d 185, 191 (Minn. App. 1989), *review denied* (Minn. Mar. 8, 1990); *see Rural Am. Bank of Greenwald v. Herickhoff*, 485 N.W.2d 702, 708 (Minn. 1992) (stating while "[o]rdinarily" statutes are not applied retroactively, amendments seeking only to clarify "may be applied retroactively" because "the legislature is not changing its mind but is only making clear the legislative intent that was always there") (citations omitted); *Nardini v. Nardini,* 414 N.W.2d 184,196 (Minn. 1987) (stating "a clarifying act is to be read into statutory law retrospectively"). Comparing Minn. Stat. § 518.611 (1990), and Minn. Stat. § 518.6111 (2002), we find that for purposes

of identifying who is obligated to perform income-withholding, the only relevant difference between the statutes is that Minn. Stat. § 518.611 (1990), lacks the definition of "payor of funds" included in Minn. Stat. § 518.6111 (2002). The results should have been the same under either statute, and the district court's use of the current statute could not have prejudiced CHOF. The district court did not exceed the scope of its authority on remand by addressing whether CHOF was a "payor of funds" under Minn. Stat. §518.6111(2002).

3. CHOF challenges the determination that it is a "payor of funds" for purposes of Minn. Stat. § 518.6111. A "payor of funds" is "any person or entity that provides funds to an obligor, including an employer as defined under chapter 24 of the Internal Revenue Code, section 3401(d), an independent contractor, payor of worker's compensation benefits or unemployment benefits, or a financial institution as defined in section 13B.06." Minn. Stat. § 518.61 subd. 1(b). Because the statute refers to "any person or entity" providing funds "including" those listed in the statute, we reject CHOF's attempt to invoke Minn. Stat. § 645.19 (2002), and the concept of *inclusio unius est exclusio alterius* to argue that an entity not listed in the statute cannot be a "payor of funds."

The Internal Revenue Code provision referenced in the definition of "payor of funds" defines "employer." It provides in part:

(d) Employer.--For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that--

(1) if the person for whom the individual performs or performed the services does not have control of the payment

of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages[.]

26 USCA § 3401(d) (West 2000). Under the Code, "wages" include both traditional cash-based pay and "remuneration... paid in any medium other than cash." 26 U.S.C.A. § 3401 (a) (West 2000). Thus, for purposes of Minn. Stat. § 518.6111, a "payor of funds" includes an entity for which a support obligor performs services and which provides the obligor with remuneration, cash-based or otherwise. Here, it is undisputed both that Rooney performs services for CHOF and CHOF-related entities, and that CHOF provides Rooney with a cash-based stipend, room and board, and other in-kind remuneration. The remuneration CHOF provides Rooney qualifies as "wages" under 26 U.S.C.A. § 3401(a), which makes CHOF Rooney's employer for purposes of 26 U.S.C.A. § 3401(d), which in turn makes CHOF a "payor of funds" for purposes of Minn. Stat. § 518.6111. As a "payor of funds," CHOF is subject to the statutory withholding requirements.

The district court correctly ruled that CHOF was a "payor of funds" and because being a payor of funds is sufficient to impose a withholding obligation, we need not address the parties' disputes regarding whether CHOF is Rooney's "employer" for purposes of Minn. Stat. § 518.6111.

4. Under the doctrine of laches, "when one sits on one's rights for too long a time, that person's claim should be estopped from continuing because it would be inequitable to require the defendant to fight the suit." *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). Whether to apply laches "depends upon the facts of the particular case and rests largely with the discretion of the trial court." *Corah v. Corah*, 246 Minn. 350, 357, 75 N.W.2d 465, 469 (1956). Here, CHOF admits that laches does not apply to child support obligations, but it argues that the delay in seeking a hearing on remand

entitles CHOF to invoke laches against any withholding-related obligation arising out of the remand. We reject this argument because it incorrectly assumes that Patricia Rooney or the county had the primary burden of proceeding on remand.

Generally, "it is the trial court's duty to insure that a remand hearing is held." *Grilli v. State*, 378 N.W.2d 823, 825 (Mien. App. 1985). This general rule, however, "may be modified by the particular holding in an individual case[.]" *Id.* Because the holding of *Rooney I* does not indicate that it was modifying the presumptively-applicable general rule, the primary duty of holding the hearing on remand was on the district court. When the district court did not set a hearing date, the Rooneys, CHOF, and the county all had numerous procedural options for seeking, and if necessary compelling, the setting of a hearing date. None of them did. As found by the district court in its order remanding the matter to the child support magistrate, there "is plenty of blame to go around for the failure to more promptly initiate remand proceedings and to answer unresolved questions in this case." The record supports this finding.

5. The district court found that CHOF's liability for withholding dates back to August 20, 1990. On appeal, CHOF alleges this is wrong because Rooney I reversed the withholding order and no withholding obligation has been imposed since that time. This is incorrect. CHOF appealed an April 25, 1991 district court order affirming the referee's February 21, 1991 order which, among other things, (a) noted CHOF had been ordered to perform withholding on May 14, 1990, (b) found CHOF had made payments on support but not maintenance or arrears, (c) awarded mother judgment against CHOF and CHOF-related entities and persons for support and maintenance arrears, and (d) directed that income withholding "will continue..., pursuant to the [May 14, 1990 order]." On appeal, this court reversed "the trial court's judgment against

[CHOF] as an ex-spouse's employer for payment of maintenance and child support obligations under Minn. Stat. §§ 518.611 and 518.613." *Rooney I*, 478 N.W.2d at 547. Thus, this court reversed the portion of the 1991 judgment against CHOF for arrears. It did not address, reverse, or otherwise review the unappealed May 14, 1990 decision requiring CHOF to withhold. It is undisputed that CHOF received the May 14, 1990 withholding order and attempted to comply with it starting no later than August 1990. The district court correctly determined that CHOF's obligation to perform withholding dated from August 20, 1990.[1]

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[1] As exemplified by the child support magistrate's February 2002 order addressing the "joinder" of CHOF as a party to this proceeding, the record, the parties, and the court are less than clear about when CHOF became a party to these proceedings. It is clear however, that any objection CHOF had to the court exercising personal jurisdiction over it was waived when, in August 1990, its attorney sent a letter to the county stating that complying with all aspects of the May 1990 withholding order was not possible, that CHOF and others named in the withholding order were not parties to the proceeding, but not objecting to the existence of the withholding obligation and expressing CHOF's "interest in fully complying with the Court's order." *See* Minn. R. Civ. P. 12.08 (addressing waiver of objection to lack of personal jurisdiction); *Patterson v. Wu Family Corp*, 608 N.W.2d 863, 867-68 (Minn. 2000) (same). It was CHOF's lack of full compliance with the withholding order that prompted the 1991 proceedings and the appeal in Rooney I, which resulted in the remand from which this appeal is taken. "The reconsideration of a case on remand (and a subsequent appeal) is a continuation of the original proceeding." *Mattson v. Underwriters at Lloyds of London*, 414 N.W.2d 717, 720 (Minn. 1987). Because CHOF has been a party to this proceeding (at least for withholding purposes) since before the first appeal was taken, there was no need to "join" CHOF on remand.

6. CHOF argues that because it gives stipends to its members who are nonworkers as well as members who are workers, the stipend should not be treated the same as amounts earned by child-support obligors working in a more traditional arrangement. But for purposes of child support, income includes "any form of periodic payment[,]" including "unemployment benefits[,]" which (like the CHOF stipends to nonworkers) are paid to nonworkers. Minn. Stat. § 518.54, subd. 6 (2002). CHOF also appears to argue that because much of the remuneration it provides Rooney is in kind, to require it to perform withholding on Rooney's income, wages, or salary as required by Minn. Stat. § 518.6111, subd. 5, is to impute income to CHOF and that there is no authority allowing a court to impute income to a payor of funds. Because CHOF's various in-kind disbursements to Rooney pay or reduce his living expenses, they can be considered when determining his income and ability to pay support. *Cf.* Minn. Stat. § 518.551, subd. 5(b)(1) (2002) (noting "net income" for support purposes includes "inkind payments received by the obligor in the course of employment" if those payments "reduce the obligor's living expenses"); Minn. Stat. § 518.551, subd. 5(c)(1) (2002) (requiring district court to consider "all earnings, income and resources of the parents" when setting support); *Darcy v. Darcy*, 455 N.W.2d 518, 521 (Minn. App. 1990) (noting breadth of requirement that court consider earnings, income, and resources, and stating "[t]he exact parameters of what may or may not be used to satisfy or set a support obligation have not been fully determined").

On this record, however, we cannot affirm the calculation of the arrears or the amount of the prospective withholding requirement. In setting the arrears and the withholding requirement, the child support magistrate denied CHOF's request to conduct additional discovery as well as CHOF's request for an evidentiary hearing on issues including

the value of the services provided by Rooney and the value of the remuneration provided by CHOF. The child support magistrate did so citing First Amendment concerns, the scope of the remand ordered by the district court, the lack of evidence that the value of Rooney's services, as found to be $24,000 in the dissolution judgment, have changed, the fact that the remand was to enforce rather than modify the existing obligation, and because the child support magistrate believed he lacked jurisdiction to modify spousal maintenance. These concerns are rendered no longer applicable in light of our rejection of CHOF's First Amendment arguments, the 15 years that have passed since the judgment's $24,000 valuation of Rooney's services, our holding that any motion to modify maintenance or support either prospectively or retroactively shall be combined with the remand we order here, and the fact that we are remanding this case to the district court. Therefore, on remand, the parties may (a) conduct reasonable discovery; (b) conduct an evidentiary hearing; and (c) combine any motion to modify support or maintenance either prospectively or retroactively with the recalculation of arrears and the prospective withholding obligation.

By notice of review, Patricia Rooney challenges the applicability of the withholding limits in Minn. Stat. § 5 subd. 9(a), which states: "Amounts withheld from an employee's income must not exceed the maximum permitted under the Consumer Credit Protection Act, title 15 of the United States Code, section 1673(b)." *Rooney I* holds that the "income withholding procedure is analogous to a garnishment." Rooney I, 478 N.W.2d at 547. The limits provided in 15 U.S.C.A. § 1673(b) (West 2000) address the amount that can be garnished for child-support purposes. The district court did not err in ruling that the garnishment limits in Minn. Stat. § 5 subd. 9(a), apply here.

DECISION

Resolution of a question of income withholding under Minn. Stat. § 518.6111 (2002), does not violate the Establishment Clause of the United States Constitution where application of the statute does not excessively entangle the court with religious doctrine or practices. The application of Minn. Stat. § 518.6111 does not violate the right to free exercise of religion under the United States or Minnesota Constitutions where application of the statute is the least restrictive means available to vindicate the state's compelling interest in assuring adequate support of children. The district court did not err by deciding the remand under a statute replacing the statute under which the remand was originally ordered, by concluding that a religious institution providing in-kind benefits to a church member can be a "payor of funds" under Minn. Stat. § 51 or in determining the effective date of a withholding obligation under that provision. Nor did the district court abuse its discretion in ruling that, on the unique facts of this case, laches was not applicable. Because the district court's calculation of arrears and the amount to be withheld was impacted by our resolution of the First Amendment and other questions presented on appeal, we reverse and remand those aspects of the case.

Affirmed in part, reversed in part, and remanded.

RANDALL, Judge (concurring in part and dissenting in part).

I concur with the majority on issues 1, 2, and 3. Minnesota courts have subject matter jurisdiction, I find no violation of either the state or the federal constitution on these facts, and most certainly CHOF can reasonably be construed to be both payor of funds and an employer of Michael Rooney.

I dissent on that part of the opinion addressing the retroactive date to which arrearages for maintenance and child support can be calculated. I conclude the CSM had it correct

when he calculated arrearages only back to 2002 when CHOF was finally made a formal party and there was an actual hearing, 11 years after this court had reversed and remanded the case for such a hearing. I also conclude that arrearages, if any, should only be assessed against CHOF. At no time in the course of this case did Michael Rooney ever receive enough disposable cash from CHOF that he personally could ever pay any part of the originally imposed child support and maintenance. All personal judgments against Michael Rooney should be vacated and the eventual arrearages and judgment calculated only against CHOF.

The 1988 dissolution judgment imputed income to Michael T. Rooney by subjectively assigning him a profession and then estimating his earning ability on this "estimated earning ability." Rooney was ordered to pay both child support for four children in the amount of $600.52 per month and spousal maintenance to Patricia Rooney in the amount of $250.00 per month. At that time, Patricia Rooney wasreceiving welfare assistance from Ramsey County. She has not received public assistance for years; yet, Michael Rooney's maintenance obligation has never had a meaningful review.

In February 2002, CHOF was finally joined as a party and finally got the evidentiary hearing granted them back in 1991! The evidentiary hearing took place on April 17, 2002. That hearing looked at the issue of whether CHOF was an employer for withholding purposes and did not calculate reasonable child support and spousal maintenance, even though the majority of Patricia Rooney's minor children, on which the original 1988 order was based, were now emancipated adults! Nor was her spousal maintenance recalculated, even though the figure had been set when she was receiving county assistance and had never been changed, and even though for years, through the present, she has been gainfully employed, and earns far in excess of Michael Rooney.

The child support magistrate found that CHOF was an employer for withholding purposes and ordered judgment for arrearages against CHOF back to January of 2002, the point when CHOF was a party and had its evidentiary hearing. CHOF appealed this decision to the district court, not arguing that January of 2002 was an unfair starting date, but rather continued its argument that the religious freedom clauses of the federal and state constitutions deprived courts of jurisdiction over whether they are "an employer" for purposes of employer withholding.

The district court upheld the magistrate's employment ruling, but then went on to reverse the magistrate's determination that 2002 was an appropriate starting date to calculate arrearages against CHOF and found, rather, that CHOF was responsible for arrearages dating back to the original 1990 withholding order. The district court remanded the matter back to the magistrate (CSM) for a calculation of all arrearages. That resulted in an order finding CHOF, as an employer of Michael Rooney, responsible for $100,976.82 in child support arrearages and $38,955.00 in spousal maintenance arrearages. All arrearages on child support and maintenance were based on the amounts ordered in the 1988 dissolution without regard to, even in the face of, an explicit reference in the record, for the fact that the majority of Michael Rooney's dependents had become emancipated years past. Patricia Rooney's present financial circumstances and needs were again not taken into account.

At every step of this case, Michael Rooney is recognized by the courts as being in good faith. In the 1977 order, the court recognized Michael Rooney's "good faith" in

regards to his religious commitment.[2] There is no argument that Michael Rooney's beliefs are sincerely held.[3]

There is disagreement between the parties regarding whether this court's 1991 reversal vacated the entire withholding order against CHOF or just the order for arrears or just turned on the need for an evidentiary hearing. CHOF contends that the 1991 district court decision was in error, and since they prevailed on appeal, CHOF argues no present withholding order is in place, and any sporadic payments that CHOF made on behalf of Michael Rooney were voluntary (CHOF argues it does understand the need for obligors to help with their dependent children who have moved outside of "the CHOF

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[2] In the May 1997 order the district court stated:

> Respondent's good faith pursuance of his religion is not a question. He is committed to and does follow the precepts of his beliefs. The assets which he owns are minimal and of only nominal value, ie. the family's clothing, a few pieces of furniture, a TV, a microwave and other small appliances which respondent values at having a total, aggregate value of not more than $500.00. Respondent has no car, no savings, no checking, no investments, no retirement or pension. He is totally dependent upon the CHOF for his continued existence. Respondent does, however, have the ability to earn income but by reason of his religious commitment does not directly earn income.

[3] In the January 21, 2003 order, the magistrate acknowledged this sincerely held belief when he refused to grant an evidentiary hearing to re-determine the amount paid by CHOF stating such an examination would "require the close examination of details, mundane and sacred, of the relationship between a man and his church."

family," and will help out while maintaining their stance that they are not required to) CHOF is correct that they won on appeal in 1991. The case was reversed and remanded to the district court for answers that have been left unsaid for 11 years.

> We remand for the trial court to clearly enunciate answers to the following questions: (1) Did appellant by its conduct waive its right to an evidentiary hearing? (2) If not, is appellant an employer? (3) If so, what is the amount of Rooney's spousal maintenance and child support obligation?"

Rooney v. Rooney, 478 N.W.2d 545, 547 (Minn. App. 1991).

This 1991 order specifically required that CHOF's status as an employer and the amounts of Rooney's spousal maintenance and child support obligation be defined. CHOF won the appeal. The impetus was not on CHOF to move forward on the remanded issues. The other parties and/or the district court, sua sponte, were responsible for calendaring, not CHOF. This case sat until January 10, 2002, over a decade later, when CHOF was joined as a party. On June 14, 2002 the order on remand was finally followed when an evidentiary hearing was held to determine CHOF's status as an employer.

In the findings of fact, conclusions of law and order filed June 14, 2002, the child support magistrate found that CHOF's withholding liability dated back to January 10, 2002, when it was joined as a party. Therefore, arrears would be assigned from that date. I find that conclusion of the CSM was a correct calculation of when arrearages, if any, should commence. I suggest CHOF is responsible for arrears dating back to January 10, 2002, the date at which it was joined as a party to these proceedings.

I would remand to the district court for a reasonable recalculation based on this date. The recalculation should take into account what dependent children, if any, Patricia Rooney had in her physical custody since that time. Patricia Rooney's financial circumstances, resources, and needs, as of January 2002 should be taken into account. The standards to be applied are the standards applied in all dissolutions when one party claims they are entitled to child support and/or spousal maintenance. I conclude the amounts ordered for child support and spousal maintenance stated in the 1988 dissolution were reversed and vacated in 1991. They need now to be validly redetermined. This should happen based on Michael and Patricia Rooney's *present* circumstances, including income as to both and the financial needs of both.

Arrearages for maintenance and child support against Michael Rooney and CHOF have accumulated while Michael Rooney's children have reached adulthood, and during the years when Patricia Rooney was employed with income exceeding Michael Rooney's income. Michael Rooney's arrearages kept accruing on the original basis! Further, some time between 1988 and the present time, Patricia Rooney obtained gainful employment, and since that time her gross and net earnings have far out stripped that of Michael Rooney.

The CSM's calculation of child support and spousal maintenance was based on the 1988 determination of support and facts associated with it. As stated, the circumstances for both parties have significantly changed since the original order. At the time of the calculation of spousal maintenance, Patricia Rooney was accepting Ramsey County assistance. The record indicates that recent income for Patricia Rooney of approximately $40,000 far exceeds Michael Rooney's income. There has been an emancipation of all but one minor child, as noted by the CSM in a footnote to his decision: "In all likelihood, child support is now payable for only one child, D.R., born September 16, 1986."

Right today, and for the last few years, the record is fairly clear that between Michael Rooney's K-1 income and his biweekly stipend, he grosses less than $6,000 per year.

Another point that should be cleared up is Michael Rooney's driving privileges, as he has in the past tried to supplement his meager income by delivering pizzas. At oral argument, CHOF's attorney pointed out that Michael Rooney, in years past, had his driver's license suspended upon the initiative of Ramsey County because of claimed child support arrearages. Counsel stated, and it was not refuted, that recently Michael Rooney did get his driver's license back, but that to this day Ramsey County has refused to acknowledge the validity of Michael Rooney's reinstatement. I would direct Ramsey County to acknowledge Michael Rooney's reinstatement of his driving privileges and to cooperate, if its cooperation is needed, for him to maintain his driving privileges.

In brief, the entire problem with this case as to both child support and maintenance, and so-called arrearages against CHOF and arrearages against Michael Rooney is that following this court's reversal in 1991, no one took the initiative to follow this court's directive and have a judicial determination as to whether CHOF was an employer/payor of funds and what was a reasonable amount of child support and maintenance from Michael Rooney to have to pay. None of this happened until 2002, and, even then, no accurate determination of Michael Rooney's reasonable needs and financial resources was made and no accurate determination of Patricia Rooney's financial resources and reasonable needs was made. All calculated child support and maintenance obligations and arrearages go back 15 years to when Patricia Rooney had four dependent children living with her and was on public assistance. That has not been true for several years. Yet, Michael Rooney never had an honest recalculation. A

reasonable recalculation has to happen now before any enforceable judgment can be ordered, and that should be against CHOF, not against Michael Rooney.

This is not a case where an obligor making a substantial income quit that job and became voluntarily underemployed because he knew a dissolution was coming. These facts are exactly the reverse. Michael Rooney and Patricia Rooney, with their children, entered into a voluntary association with CHOF for at least 16 years. Patricia Rooney knew exactly that the financial circumstances were, as an understatement, extremely modest. Working for a religious organization is something like marriage, "for better or for worse, for richer or for poorer." She certainly had a right to leave CHOF, but neither she nor Ramsey County can now look backward and state that "Michael Rooney should have been making more and was worth more than that to CHOF," and "since he was `worth more' to CHOF, child support and maintenance should be based on some hypothetical figure."

This situation is not that uncommon. Dedicated young physicians and lawyers, men and women, can shun the "big money" and dedicate part of their careers (or in some laudable instances, their entire careers) to working at extremely low wages for a various assortment of storefront clinics or law offices. For instance, there is the Indian Health Service, Southern Minnesota Regional Legal Services (SMRLS), neighborhood justice center, Legal Aid clinics, etc. When that person and their spouse, voluntarily enter into that arrangement for a number of years and have their minor children during that arrangement, that is a mutual choice of the parents. The one getting divorced and leaving later cannot be heard to say that child support and maintenance should be based "on what the obligor could have gotten had he or she taken a job with a large law firm or private for-profit clinic."

I concur in part, dissent in part, and would vacate any and all arrearages, whether for maintenance or for child support against Michael Rooney personally, and assess fairly calculated arrearages against CHOF going back only to 2002.

STATE OF MINNESOTA

IN SUPREME COURT

A03-53

Patricia L. Rooney, et al.,

Respondents,

vs.

Christ's Household of Faith,

Petitioner.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Christ's Household of Faith for further review be, and the same is, denied.

Dated: November 25, 2003

BY THE COURT:

s:/
Alan C. Page
Associate Justice

(2)

No. 03-1215

SUPREME COURT, U.S.
FILED
MAR 26 2004
OFFICE OF THE CLERK

Supreme Court of the United States

Christ's Household of Faith,
Petitioner,

vs.

Patricia L. Rooney, et al.
Respondents.

On Petition for Writ of Certiorari to the
Minnesota Supreme Court

BRIEF IN OPPOSITION BY RESPONDENT RAMSEY COUNTY

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QUESTION PRESENTED

The application of a valid and neutral law of general applicability to a church and a church member does not violate the First Amendment free-exercise principle. Minnesota Courts held that Michael Rooney was employed by Christ's Household of Faith (CHOF) and that CHOF could be required to make Rooney's child support payments in his stead. Does the determination that CHOF was an employer and Rooney an employee violate the free exercise clause?

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OPINIONS BELOW

1. In re the Marriage of Patricia L. Rooney, Petitioner, Respondent v. Michael T. Rooney, Lower Court Respondent, Christ's Household of Faith, Inc. Appellant, 478 N.W.2d 545 (Minn. App. 1991). This decision is not reproduced in the Appendix to the Petition for Certiorari.

2. In re the Marriage of Patricia L. Rooney, Petitioner, Respondent, v. Michael T. Rooney, Respondent, and Christ's Household of Faith, third-party Respondent, Appellant, and Ramsey County, Intervenor, Respondent, 669 N.W.2d 362 (Minn. App. 2003), *review denied* Minn. Nov. 25, 2003. This decision is reproduced in the Appendix to the Petition for Certiorari at pages B-1 to B-29.

JURISDICTION

This Court has jurisdiction to review final decisions of the highest-level state court when there is a federal question presented. Title 28 U.S.C.§ 1257. Petitioner claims that the decision of the Minnesota Court of Appeals (and the denial of review by the Minnesota Supreme Court) that Michael Rooney is an employee of and that Christ's Household of Faith is an employer violates their rights to free exercise of religion under the First Amendment to the United States Constitution.

STATEMENT OF THE CASE

This is a child support enforcement case under Minnesota law that involves a man who incidentally is the member of a church. Michael and Patricia Rooney were married in 1964 and lived for most of their marriage as members of Christ's Household of Faith (Petitioner—hereafter CHOF). Rooney v. Rooney, 478 N.W.2d 545, 546 (Minn. App. 1991). (Hereafter Rooney 1991.) The church requires that members give up all their property to the church and relinquish any claim for payment for any services they may provide to the church. Rooney v. Rooney, 669 N.W.2d 362, 366 (Minn. App. 2003), *review denied* Minn. Nov. 25, 2003 (Hereafter Rooney 2003.) Michael Rooney performs services for CHOF. Id. In return for the property and services given to the church, the church provides necessary support to its members. Id.

Patricia Rooney left the church in 1987 with four of the couple's minor children. Id. Their marriage was dissolved in 1988. Id. Patricia Rooney was the

Petitioner in state court in the divorce proceedings and is a Respondent before this Court. Michael Rooney was Respondent in state court and is a named Respondent before this Court. Michael Rooney was ordered to pay child support and spousal maintenance, based on a determination that his earning capacity was $24,000.00 annually. Id. Patricia Rooney applied for and was given public assistance for herself and the children in her custody from Ramsey County. Id. Ramsey County was a Respondent below and is Intervenor, Respondent in this Court. This Brief in Opposition is for Ramsey County.

CHOF is a non-profit corporation but operates a number of businesses, including Northstar Services. Id. Northstar Services sells home remodeling services to the public. Rooney 1991, 546. Michael Rooney worked as a purchasing agent for CHOF, but did not receive cash compensation for his services. Id. CHOF gave him free food, clothing, housing, education, medical care, and automobile use. Id.

Michael Rooney did not receive sufficient cash compensation from CHOF to

meet his child support and spousal maintenance obligations. Rooney 2003, 366. The Minnesota District Court in 1990 determined that CHOF was Rooney's employer under Minnesota law, and ordered CHOF to perform income withholding to pay Rooney's obligations. Id. CHOF's attorney sent a letter to the county stating that CHOF could not comply with all aspects of the order, that CHOF and its related entities were not parties to the proceeding, but did not object to the withholding order. Id. CHOF made some payments on Rooney's behalf. Id. CHOF continues to make child support payments for other members. Id. 369.

In 1991, however, after the Minnesota District Court affirmed an order directing entry of judgment for support and maintenance arrears against CHOF, CHOF appealed to the Minnesota Court of Appeals and won a remand to determine whether CHOF had waived its right to an evidentiary hearing, whether CHOF was an employer under Minnesota law, and what the total amount of CHOF's obligations should be. Id. 366-67.

When the hearing on remand was ultimately held by a child support magistrate in 2002, and after the District Court remanded it to the child support magistrate for a determination of all arrearages, the District Court ruled that CHOF was responsible as an employer and "payor-of-funds" for a total of $100,976.82 in support arrearages and $38,955.00 in spousal maintenance arrearages. Id. 367.

CHOF appealed to the Minnesota Court of Appeals, claiming among other things that the exercise of jurisdiction over CHOF for compliance with a child-support withholding statute violated the First Amendment because it would involve an unconstitutional inquiry into the relationship between the church and its members. Id. The Minnesota Court of Appeals rejected CHOF's claim, holding that the state has a compelling interest in securing child support for children and that the child support and maintenance withholding statute is a neutral law that applies to all Minnesota employers and could be applied without inquiring into religious doctrine or practice. Id. 368, 370, 375.

The Minnesota Supreme Court denied CHOF's petition for further review. CHOF seeks a writ of certiorari to review the decision that the Minnesota Child Support Withholding law may be applied without an excessive entanglement in the affairs of the church.

REASONS FOR DENYING THE PETITION

I. No new or unique issue is presented.

This case does not present any new or unique issues of Constitutional law that would require or benefit from a ruling by this Court. In cases ignored by the Petitioner, this Court has already decided that a "state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest," United States v. Lee, 455 U.S. 252, 257, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982), and "that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'" Employment Div. Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872, 879, 110 S.Ct. 1595, 1600, 108 L.Ed.2d 876 (1990), *citing* United States v. Lee, supra.

This is a child support enforcement case arising under Minnesota law. Minnesota

has determined that securing child support from Rooney is a compelling governmental interest. Rooney 2003, 370. This case does not involve any dispute between competing religious persons or between a person and the religion. The state is not attempting to inquire into or influence that relationship at all. Nor does this case involve any question of the adequacy of support of children of a family living inside a religious community; the state is not attempting to inquire into or influence how CHOF and its members treat each other or the level of support given members within the church community.

This case involves a dispute between on one side a man who has fathered children and who has chosen to remain a member of a religious community to which he surrenders his property and services and on the other side his former wife and some of their children who are no longer members of the church community. Because the former wife found it necessary to turn to public assistance to provide for necessities for herself and the children in her custody, the state became involved.

Minnesota law allows a county to secure child support payments from an employer when the employee does not make timely payments of court-ordered obligations. Minn. Stat. § 518.6111. A person who is obligated to make support payments and who has the ability to obtain employment and earn a certain level of income may have that level of income imputed to him even if he voluntarily chooses to remain unemployed or if he chooses to remain underemployed or in a position for which he receives no remuneration. Minn. Stat. § 518.551, subd. 5b.

Michael Rooney provides services for CHOF, but does not receive cash compensation from CHOF. Rooney 1991, 546. For some time at least, he worked as a purchasing agent for CHOF in its primary business of selling home remodeling services to the public. Id. The Minnesota trial court imputed income to Rooney of $24,000.00 annually for the services he provided to CHOF, and ordered Rooney to make child support and spousal maintenance payments as if he received cash compensation from CHOF. Id.

Because Michael Rooney did not pay his court-ordered child support and spousal maintenance payments, CHOF was ordered to withhold Rooney's income and make the payments in his stead. Id.

The application of the Minnesota income withholding law did not require any inquiry into the religious practices of Michael Rooney or CHOF, but was based on neutral factors applicable to all Minnesota employees and employers. The state courts determined that Michael Rooney has the ability to earn a certain level of income by performing certain services. The courts imputed a certain level of income to him for his ability to perform such services.

Michael Rooney performed the services for CHOF in its remodeling business. It may be concluded that if Rooney or another member of CHOF was not able to perform the services and if CHOF was required to purchase the services on the open market, then they would have had to pay the amount that was imputed to Michael Rooney as his income.

Minnesota courts did not inquire into the religious beliefs or practices of Michael Rooney or of CHOF. Their relationship was evaluated objectively by looking at how they should be compared to other persons and organizations doing similar things. Minnesota's child support enforcement law is a valid law of general applicability that has been applied in a neutral manner to a church and a church member. This case does not present any new or unique Constitutional principle upon which this Court should rule.

II. Petitioner has waived any Constitutional challenge.

This Court should not grant the petition for a writ of certiorari because Petitioner has waived its right to claim that the Minnesota child support enforcement law involves an unconstitutional entanglement between the state and their religion.

Michael Rooney was ordered to pay child support and spousal maintenance in 1988. He made some payments but soon was in arrears. CHOF was determined to be Michael Rooney's employer and was ordered

to institute income withholding and to pay Rooney's obligations. Rooney 1991, 546.

CHOF complied in part with the withholding order by paying the amount of money that they deemed was appropriate to the value they placed on Rooney's services rather than the value imputed to his services by the state. Id.

CHOF has made many payments on Rooney's behalf, and continues to make child support payments for other church members. Rooney 2003, 369. CHOF does not claim that those payments are a burden on its right to free exercise. Id.

CHOF has waived any right to challenge the constitutionality of Minnesota's child support enforcement law by making payments on behalf of Rooney and other church members. CHOF does not claim that they should not make payments. Their claim is that they, rather than the state, should be allowed to decide the amount of the payments. This case does not present a Constitutional challenge, but an

implementation challenge under Minnesota law.

III. There is no entanglement with doctrine or belief.

CHOF claims that the exercise of jurisdiction by the state over their organization and their member Michael Rooney to enforce child support obligations involves excessive entanglement with their religious affairs. But CHOF is confusing the question of how the religion labels the relationship between itself and its members with the question of how that member and the church will be labeled by the state when determining the relationship of the church and its members with persons who are not members of the church.

CHOF is free to label its relationship with Michael Rooney in any manner it sees fit. The state does not seek to alter or influence that relationship or that labeling in any manner.

But CHOF deals with the public and with persons who are not, or are no longer, members of the religious community. It is

that sort of relationship with which the state must deal. Michael Rooney has not provided the level of support for his children and his former spouse that the Minnesota courts found was appropriate. Minnesota law was applied to determine that Michael Rooney was capable of earning a certain amount of income if he worked on the open market, and that level of income was imputed to him.

CHOF looks like a business that provides, among other things, remodeling services to the general public. There is no allegation that CHOF donates its services or presents itself in any aspect other than a profit-making company.

Michael Rooney provides services for CHOF that could be provided for any other business. If Michael Rooney provided such services for any other company he would be compensated for his services. Neither CHOF nor Michael Rooney makes any allegation that the services he provides to CHOF are not valuable. They do not even claim that the value imputed to his services would be different if provided to another business.

This case is similar to the old saying: if it walks like a duck, and quacks like a duck, then it's a duck. Here, though, the ducks do not want to be called ducks. But Michael Rooney provides services for CHOF and under any objective standard is their employee, whether or not they want to label him an employee. CHOF, likewise, is conducting business in the open market and under any objective standard is Rooney's employer, whether or not they want to be labeled an employer. They provide Michael Rooney with food, clothing, and shelter.

No inquiry is necessary into the religious practices of CHOF and Michael Rooney. Why Michael Rooney does what he does for CHOF, and what value CHOF and Rooney place on those acts is irrelevant to any determination of how such services would be valued on the open market. Their religious beliefs are irrelevant to setting the amount of his support obligations.

CONCLUSION

This Court should deny the petition for a writ of certiorari. This case does not present any new or unique issue of Constitutional or federal law that would benefit from a ruling by this Court. This case does not concern any involvement of the state with the religious practices of Michael Rooney or CHOF. This case merely presents a question of the implementation of Minnesota's child support enforcement law to a situation that happens to involve a man who is employed by a church.

Dated: 26 Mar. '04 Respectfully submitted;

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